

**SIXTH AMENDMENT TO CONTRACT NUMBER PS913AA  
MODERN DISPOSAL SERVICES, INC.  
GROUP 79013, AWARD 22760-SW  
Recycling and Trash Removal Services (Statewide)**

**THIS SIXTH AMENDMENT** (hereinafter “**Sixth Amendment**”), is made between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter “**State**” or “**OGS**”), whose principal place of business is the 36<sup>th</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12242, pursuant to authority granted under New York State Finance Law §163, and **Modern Disposal Services, Inc.** (hereinafter “**Contractor**”), with its principal place of business at 590 Elk Street, Buffalo, NY 14210. The foregoing are collectively referred to as the “**Parties**.”

**W I T N E S S E T H:**

**WHEREAS**, OGS entered into a centralized contract for the acquisition of Recycling and Trash Removal Services (Statewide), (herein after referred to as the “**Contract**” or “**Contract No. PS913AA**”) with Modern Disposal Services, Inc. on December 1, 2015); and

**WHEREAS**, the initial term of Contract No. PS913AA ran from December 1, 2015 to November 30, 2020, pursuant to Contract Section 3.1 *Contract Period* which provides that “Contract(s) awarded under the Solicitation will have a term of five years....[and may be extended] for additional periods up to a maximum of four years;” and

**WHEREAS**, the Parties extended the term of Contract No. PS913AA for one (1) year until November 30, 2021 via a Third Amendment, and then subsequently extended the term for two (2) more years until November 30, 2023 via a Fifth Amendment; and

**WHEREAS**, the Parties wish to amend the Contract to extend the Contract term for one (1) year pursuant to Contract Section 3.1 *Contract Period*, and for an additional one (1) year pursuant to Appendix B *General Specifications (2014)*, Section 58 *Contract Term – Renewal* which provides that “[i]n addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year,” for a total term of two (2) years until November 30, 2025, or until OGS awards a new contract for Recycling and Trash Removal (Statewide), whichever occurs first, and to amend certain other terms of the Contract.

**NOW THEREFORE**, in consideration of the mutual covenants, herein contained, the Parties do hereby agree as follows:

**1. TERM**

Pursuant to Contract Section 3.1 *Contract Period*, and Appendix B *General Specifications (2014)*, Section 58 *Contract Term – Renewal*, the term of the Contract is extended (via a combination of two (2) one-year extensions) for a total of two (2) years through and including November 30, 2025, or until a new contract for Recycling and Trash Removal (Statewide) is awarded, whichever occurs first.

**2. NYS COMPTROLLER APPROVAL**

The Contract is amended to add the following new Section 4.11 *NYS Comptroller Approval*, to read as follows:

**4.11 NYS COMPTROLLER APPROVAL**

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until this Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions issued under this Contract may also be subject to OSC approval.

### **3. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

Section 3.16 *Contractor Requirements and Procedures For Business Participation Opportunities For NYS Certified Minority- And Women-owned Business Enterprises and Equal Employment Opportunities For Minority Group Members and Women*, of the Contract is deleted in its entirety and replaced with the following new Section 3.16 *Contractor Requirements and Procedures For Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women*, to read as follows:

#### **3.16 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

##### **I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

##### **II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

##### **III. Equal Employment Opportunity (EEO)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other

activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/>. Additionally, following Contract execution, Contractor is encouraged to

contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

**B. Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

**V. Fraud**

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

**ALL FORMS ARE AVAILABLE AT:** <https://ogs.ny.gov/MWBE>

[Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.](#)

**4. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

The Contract is amended to add the following new Section 4.12 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses to read as follows:

**4.12 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteranDevelopment@ogs.ny.gov](mailto:VeteranDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

## **5. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4**

Section 3.25 *Environmental Attributes and NYS Executive Order No. 4* of the Contract is deleted in its entirety and replaced with the following new Section 3.25 Environmental Sustainability and NYS Executive Order Number 22, to read as follows:

### **3.25 ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER NUMBER 22**

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenyny/>. State entities subject to Executive Order No. 22 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

## **6. CONTRACT DOCUMENTS; ELECTRONIC FORMAT**

The Contract is amended to add the following new Section, 4.13 *Contract Documents; Electronic Format*, to read as follows:

### **4.13 CONTRACT DOCUMENTS; ELECTRONIC FORMAT**

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

## **7. DRUG AND ALCOHOL USE PROHIBITED**

Section 3.26 Drug And Alcohol Use Prohibited of the Contract is deleted in its entirety and replaced with the following new Section 3.26 *Drug and Alcohol Use Prohibited*, to read as follows:

### **3.26 DRUG AND ALCOHOL USE PROHIBITED**

For reasons of safety and public policy, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

## **8. APPENDIX A**

Appendix A *Standard Clauses for New York State Contracts*, included in the original Contract, is deleted in its entirety and replaced with the Appendix A dated June 2023 attached hereto, which is expressly made a part of this Sixth Amendment as fully as if set forth at length herein. All references in the Contract to Appendix A shall be deemed to reference Appendix A, *Standard Clauses for New York State Contracts* (June 2023).

## **9. APPENDIX D**

The Contract is amended to add Appendix D – *Federal Funding Agency Mandatory Terms and Conditions* dated July 2021, attached hereto, which is expressly made a part of this Sixth Amendment as fully as if set forth at length herein.

Contract PS913AA, Modern Disposal Services, Inc., Sixth Amendment

## **10. CONFLICT OF TERMS**

Section 3.19 *Conflict of Terms* of the Contract is deleted in its entirety and replaced with the following new Section 3.19 *Conflict of Terms*, to read as follows:

### **3.19 CONFLICT OF TERMS**

Conflicts among the documents shall be resolved in the following order or precedence:

1. Appendix A Standard Clauses for New York State Contracts;
2. Sixth Amendment to Contract Number PS913AA;
3. Appendix D Federal Funding Agency Mandatory Terms and Conditions;
4. Fifth Amendment to Contract Number PS913AA;
5. Fourth Amendment to Contract Number PS913AA;
6. Third Amendment to Contract Number PS913AA;
7. Second Amendment to Contract Number PS913AA;
8. First Amendment to Contract Number PS913AA;
9. The Master Contract (the portion of this document preceding the signature of the parties, including all attachments);
10. Appendix B General Specifications;
11. Any Mini-Bid Contract.

## **11. SEVERABILITY**

In the event that any one or more of the provisions of this Sixth Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Sixth Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Sixth Amendment.

- 12.** Except as herein modified, all other terms and conditions of Contract PS913AA shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Sixth Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Sixth Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Sixth Amendment, Appendix A *Standard Clauses For New York State Contracts*, (June 2023) (Appendix B *General Specifications* (June 2014), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

## CONTRACTOR

Signature:

Printed Name:

Title:

Date:

Company Name: Modern Disposal Services, Inc.

Federal ID: 16-0875858

NYS Vendor ID: 1000014982

THE PEOPLE OF THE STATE OF NEW YORK,  
ACTING BY AND THROUGH THE COMMISSIONER  
OF GENERAL SERVICES

Signature:

Printed Name:

Title:

Date:

Office of General Services

NEW YORK STATE OFFICE OF THE STATE  
COMPTROLLER



**NOTICE: This Sixth Amendment becomes effective upon OSC approval. OGS will then post a notification to its website in the form of a Contract Award Notification Update.**

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF

NEW YORK

COUNTY OF

NIAGARA

: SS:

On the 30<sup>th</sup> day of AUGUST in the year 2023, before me personally appeared GARY R. G, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at

Town of

Buffalo

County of

ERIE

State of

NY.

; and further that:

**[Check One]**

☐ If an individual: he executed the foregoing instrument in his/her name and on his/her own behalf.

☒ If a corporation: he is the Municipal Accounts MGR. of Modern Disposal Services Corp. the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ If a partnership: he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ If a limited liability company: he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Mary K Mahoney

Signature of Notary Public

Notary Public Registration No. 01MA6331133

State

New YorkQualified Erie County

MARY K. MAHONEY  
No. 01MA6331133  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 10/05/2023



## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## **APPENDIX D**

Authorized users that may want to seek federal funds from the federal funding agencies for the purchase of goods or services during a declared disaster are advised that federal funding agencies require particular terms and conditions be included in the contract for those goods and services. For the convenience of authorized users, those terms and conditions are set out below and can also be found at the FEMA website.

Authorized users of statewide contracts should consider adding this language to future purchase orders and secondary level competitions (often referred to as RFQs or mini- bids), unless the language is already attached to the statewide contract. State agencies making purchases to respond to disasters through a vehicle other than a centralized contract are required by Section H.6. of [Budget Bulletin H-501R](#) to include these and other terms into their contracts using the Appendix set forth in the Budget Bulletin.

### **Federal Funding Agency Mandatory Terms and Conditions**

The following provisions are required by federal funding agencies in order for expenditures by Authorized Users to be eligible for federal reimbursement in the event of a State declaration of disaster emergency pursuant to Section 28 of the Executive Law.

#### **1. REMEDIES**

Remedies for Contractor failure to observe or perform any term or condition shall be as provided in the OGS centralized contract (if applicable), including all appendices.

#### **2. TERMINATION FOR CAUSE AND CONVENIENCE**

Termination for cause and convenience will be in accordance with Termination, Appendix B, General Specifications, if a statewide centralized contract, and Section 5, Copeland Anti-Kickback Act, of this document and/or the rules and regulations of your governing authority.

#### **3. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of the contract, OGS centralized contract (if applicable) or any purchase by an Authorized User, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the



compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the OGS centralized contract or with any of the said rules, regulations, or orders, the OGS centralized contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Authorized User further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Authorized User so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Authorized User agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision

of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Authorized User further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Authorized User agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Authorized User under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Authorized User; and refer the case to the Department of Justice for appropriate legal proceedings.

**4. DAVIS-BACON ACT. (Applicable to all construction contracts in excess of (\$2000)**

- A. If applicable, all transactions regarding the OGS centralized contract or any purchase by an Authorized User shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- B. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- C. Additionally, Contractors are required to pay wages not less than once a week.

**5. COPELAND ANTI-KICKBACK ACT. (Applicable to all construction contracts in excess of (\$2000)**

- A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Federal funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. (Applicable to all contracts in excess of \$100,000 that involve employment of mechanics and laborers)**

- A. Overtime requirements. No Contractor or subcontractor for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- C. Withholding for unpaid wages and liquidated damages. The Authorized User shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal Agreement with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

## **7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

All such rights shall be addressed in accordance with Ownership/Title to Project Deliverables, Appendix B, General Specifications.

## **8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT. (Applicable to all contracts in excess of \$150,000)**

### **Clean Air Act**

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. The Contractor agrees to report each violation to the contract manager or the Office of General Services and the Authorized User if a statewide centralized contract and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

### **Federal Water Pollution Control Act**

- A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. The Contractor agrees to report each violation to the Office of General Services and Authorized User and understands and agrees that the Office of General Services or the Authorized User will, in turn, report each

violation as required to assure notification to the Federal funding agency, and the appropriate Environmental Protection Agency Regional Office.

- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal funding agency.

## **9. DEBARMENT AND SUSPENSION**

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the State or Authorized User. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or an Authorized User, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **10. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (as amended)**

If the OGS centralized contract or any purchase by an Authorized User has a value of \$100,000 or more, Contractor shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- A. Required Certification. If applicable, Contractors must sign and submit to the State the following certification.

### **APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements. The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Modern Disposal Services Corp., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official [Signature]

Name of Contractor's Authorized Official GARY T. LOG

Title of Official Municipal Acis Mgr.

Date: 8/30/2023

#### 11. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired —
  - Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

#### 12. ACCESS TO RECORDS

- A. The Contractor agrees to provide the Office of General Services or the Authorized User, the Federal funding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- C. The Contractor agrees to provide the Federal funding agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- D. The State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal funding agency or the Comptroller General of the United States.

### **13. CHANGES**

Amendments to this contract shall be in accordance with the terms of the OGS centralized contract.

### **14. FEDERAL SEAL(S), LOGOS, AND FLAGS**

The Contractor shall not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

### **15. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

This is an acknowledgement that Federal funding agency financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA or other federal agency policies, procedures, and directives.

### **16. NO OBLIGATION BY FEDERAL GOVERNMENT**

The Federal Government is not a party to this Contract or any purchase by an Authorized User and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract or any purchase by an Authorized User.

### **17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract or any purchase by an Authorized User.

### **18. FEDERAL DEBT**

The Contractor certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

### **19. CONFLICTS OF INTEREST**

The Contractor shall notify the Office of General Services and Authorized User as soon as possible if this Agreement or any aspect related to the anticipated work under this Agreement raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the Office of General Services and Authorized User is able to assess the actual or potential conflict. The Contractor shall provide any additional information necessary for the Office of General Services and Authorized User to fully assess and address the actual or potential conflict of interest.

### **20. U.S. EXECUTIVE ORDER 13224**

Contractor, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

**STATE OF NEW YORK**  
**OFFICE OF GENERAL SERVICES**  
**FIFTH CONTRACT AMENDMENT**  
**WITH**  
**MODERN DISPOSAL SERVICES, INC.**  
**Award 22760-SW Contract No. PS913AA**

**THIS FIFTH CONTRACT AMENDMENT** (hereinafter "**Fifth Amendment**"), is made to Contract # PS913AA (hereinafter "Contract") by and between the **People of the State of New York, acting by and through the Commissioner of General Services** (hereinafter "OGS" or "State"), whose principal place of business is at the 36<sup>th</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12242 , and Modern Disposal Services, Inc. (hereinafter "Contractor"), with its principal place of business at 590 Elk Street, buffalo, NY 14210. The State and the Contractor are individually referred to as the "Party" and collectively referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Parties entered into the Contract effective December 1, 2015 for **Recycling and Trash Removal (Statewide)**;

**WHEREAS**, the Contract is scheduled to expire on November 30, 2021;

**WHEREAS**, OGS now seeks to amend the Contract to extend the Contract term through and including November 30, 2023 in accordance with Contract Section 3.1 Contract Period or until OGS awards a new contract for Recycling and Trash Removal (Statewide), whichever occurs first; and

**WHEREAS**, Contractor agrees to such amendments to the Contract.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the Parties agree as follows:

**1. TERM**

The term of the Contract is extended through and including **November 30, 2023** or until OGS awards a new contract for Recycling and Trash Removal (Statewide), whichever occurs first.

**2. SEVERABILITY**

In the event that any one or more of the provisions of this Fifth Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Fifth Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Fifth Amendment.

**3.** Except as herein modified, all other terms and conditions of the Contract shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Fifth Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Fifth Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

**Modern Disposal Services, Inc.**Signature: Printed Name: Michael P. McNerneyTitle: Chief Executive OfficerFederal ID: 16-0875858NYS Vendor ID: 1000014982Date: July 14, 2021**THE PEOPLE OF THE STATE OF NEW YORK**Signature: Printed Name: TODD GARDNERTitle: Assistant DirectorDate: 11/10/2021

**NOTICE:** This Fifth Amendment becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.



**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF New York }

: SS:

COUNTY OF Erie }

On the 14<sup>th</sup> day of July in the year 2021, before me personally appeared, MICHAEL P. MCINERNEY, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at Modern Disposal Services, Inc

Town of: Model CityCounty of: Niagara, State of: NY; and further that:**[Check One]**

☐ If an individual: he executed the foregoing instrument in his/her name and on his/her own behalf.

☒ If a corporation: he is the Chief Executive Officer of Modern Disposal Services, Inc, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ If a partnership: he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ If a limited liability company: he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

BRENDA BRANT  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01BR6409119  
Qualified in Erie County  
My Commission Expires 09-21-2024

Signature of Notary Public

Notary Public Registration No. 01BR6409119 State New York

**STATE OF NEW YORK**  
**OFFICE OF GENERAL SERVICES**  
**FOURTH CONTRACT AMENDMENT**  
**WITH**  
**MODERN DISPOSAL SERVICES, INC.**  
**Award 22760-SW Contract No. PS913AA**

**THIS FOURTH CONTRACT AMENDMENT** (hereinafter "**Fourth Amendment**"), is made to Contract # PS913AA (hereinafter "**Contract**") by and between the **People of the State of New York, acting by and through the Commissioner of General Services** (hereinafter "**OGS**" or "**State**"), whose principal place of business is at the 36<sup>th</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12242 , and Modern Disposal Services, Inc. (hereinafter "**Contractor**"), with its principal place of business at 590 Elk Street, Buffalo, NY 14210. The State and the Contractor are individually referred to as the "**Party**" and collectively referred to as the "**Parties**."

**WITNESSETH:**

**WHEREAS**, the Parties entered into the Contract effective December 1, 2015 for **Recycling and Trash Removal (Statewide)**;

**WHEREAS**, the Contract is scheduled to expire on November 30, 2020;

**WHEREAS**, the Contractor and OGS recently executed a Fourth Contract Amendment to the Contract to modify Attachment 1 – Summary of Lots and Regions Awarded to reflect the increase to Contractor's Master Contract Unit Prices(s) approved by OGS pursuant to Contract Section 3.3, Price Adjustments;

**WHEREAS**, OGS now seeks to amend the Contract to extend the Contract term through and including November 30, 2021 in accordance with Contract Section 3.1 Contract Period or until OGS awards a new contract for Recycling and Trash Removal (Statewide), whichever occurs first;

**WHEREAS**, OGS also seeks to amend certain other terms of the Contract; and

**WHEREAS**, Contractor agrees to such amendments to the Contract.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions herein contained, the Parties agree as follows:

**1. TERM**

The term of the Contract is extended through and including **November 30, 2021** or until OGS awards a new contract for Recycling and Trash Removal (Statewide), whichever occurs first.

**2. CONTRACTOR RESPONSIBILITY**

Section 3.14 New York State Vendor Responsibility, of the Contract, is hereby deleted in its entirety and replaced with the following new Section 3.14:

**3.14 NEW YORK STATE VENDOR RESPONSIBILITY**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested

by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### **3. SEVERABILITY**

In the event that any one or more of the provisions of this Fourth Amendment shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Fourth Amendment, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

4. Except as herein modified, all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Fourth Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Modern Disposal Services, Inc.

Signature: 

Printed Name: Michael P. McInerney

Title: Chief Executive Officer

Federal ID: 16-0875858

NYS Vendor ID 1000014982

Date: September 11, 2020

THE PEOPLE OF THE STATE OF NEW YORK

Signature: 

Printed Name: TODD GARDNER

Title: CMS 3

Date: 11/24/2020

**NOTICE:** This Fourth Amendment becomes effective once OGS approves and an authorized signatory executes. OGS will then post a notification to its website in the form of a Purchasing Memorandum.

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF New York }

: SS:

COUNTY OF Niagara }

On the 11<sup>th</sup> day of September in the year 2020, before me personally appeared Michael P. McInerney, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at

Town of Lewiston \_\_\_\_\_

County of Niagara \_\_\_\_\_, State of New York \_\_\_\_\_, and further that

**[Check One]**

☐ If an individual: \_he executed the foregoing instrument in his/her name and on his/her own behalf.

☒ If a corporation: he is the Chief Executive Officer of Modern Disposal Services, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ If a partnership: \_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ If a limited liability company: \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.



Signature of Notary Public

Notary Public Registration No. \_\_\_\_\_ State \_\_\_\_\_

**RICHARD A. CHENEZ**  
 NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN NIAGARA COUNTY  
 Commission Expires 3/19/22



# RECYCLING & TRASH REMOVAL SERVICES

PS913AA

THIRD AMENDMENT

between

NEW YORK STATE

OFFICE OF GENERAL SERVICES

And

MODERN DISPOSAL SERVICES, INC.

**THIRD CONTRACT AMENDMENT FOR  
STATE OF NEW YORK OFFICE OF GENERAL SERVICES**

**Contract # PS913AA**

**THIS THIRD AMENDMENT** (hereinafter "Amendment") is by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), whose office is on the 36th Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "State" or "OGS") acting pursuant to authority granted under State Finance Law §163, and Modern Disposal Services, Inc., 590 Elk Street, Buffalo, NY 14210 (hereinafter "Contractor"). OGS and the Contractor shall be individually referred to as "Party" and collectively as "Parties."

**WHEREAS**, the State and Contractor entered into Contract # PS913AA (hereinafter "Contract") for Recycling & Trash Removal Services;

**WHEREAS**, Contract Section 3.3, Price Adjustments, allows OGS to consider Contractor request(s) for increases to the Master Contract Unit Price based on 'CPI Adjustments' and/or 'Request for Increases in Master Contract Unit Prices Due to Market Condition Outside of Contractor's Control';

**WHEREAS**, Contractor submitted a request, and OGS has approved certain portions of such request, for increases to Contractor's Master Contract Unit Price(s) pursuant to Section 3.3, Price Adjustments, for 'CPI Adjustments' and 'Request for Increases in Master Contract Unit Prices Due to Market Condition Outside of Contractor's Control' due to increases in Tipping Fees and Recycling Fees; and

**WHEREAS**, the Parties have agreed to enter this Amendment to modify Attachment 1 - Summary of Lots and Regions Awarded, attached to the Contract, to reflect the increase to Contractor's Master Contract Unit Price(s) approved by OGS pursuant to section 3.3, Price Adjustments, and to modify certain other terms of the Contract.

**NOW THEREFORE**, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each Party hereto from the other, the Parties hereby agree as follows:

1. Appendix A, Standard Clauses for New York State Contracts, dated January 2014, attached to the Contract, is hereby deleted in its entirety and replaced with the attached revised Appendix A, Standard Clauses For New York State Contracts, dated October 2019.
2. Section 3.12, Appendix A, of the Contract, is hereby deleted in its entirety and replaced with the following new Section 3.12:

**3.12 Appendix A**  
Appendix A, Standard Clauses For New York State Contracts, dated October 2019, attached hereto, is hereby expressly made part of this Contract as fully as if set forth at length herein.
3. Except as herein modified, all terms and conditions of the Contract shall remain in full force and effect.

Remainder of page intentionally left blank

# Signature Page

IN WITNESS WHEREOF, the Parties have executed this Third Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Third Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

## CONTRACTOR

Signature: \_\_\_\_\_

Printed Name: Joseph M. Hickman \_\_\_\_\_

Title: Strategic / Municipal Sales Manager \_\_\_\_\_

Company Name: Modern Disposal Services, Inc. \_\_\_\_\_

Date: May 27, 2020 \_\_\_\_\_

Federal ID: 16-0875858 \_\_\_\_\_

NYS Vendor ID 1000014982 \_\_\_\_\_

## THE PEOPLE OF THE STATE OF NEW YORK

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office of General Services

Date: \_\_\_\_\_



**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF: NEW YORK }

: Sworn Statement:

COUNTY OF: Niagara }

On the 27<sup>th</sup> day of May in the year 2020, before me personally appeared *Joseph M. Hickman*, Strategic / Municipal Sales Manager, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at  
4746 Model City Road, Model City New York

and further that:

[Check One]

( If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.

( X If a corporation): \_he is the Strategic / Municipal Sales Manager of Modern Disposal Services, Inc. the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

( If a partnership): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

( If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.



May 27, 2020

RICHARD A. CHENEZ  
Notary Public, State of New York  
Qualified in Niagara County  
My Commission Expires 3/19/2022

Signature of Notary Public

Notary Public Registration No. \_\_\_\_\_

State \_\_\_\_\_

## APPENDIX A

# STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.





NYS OFFICE OF GENERAL SERVICES

*Serving New York*

# RECYCLING & TRASH REMOVAL SERVICES

PS913AA

SECOND AMENDMENT

between

NEW YORK STATE

OFFICE OF GENERAL SERVICES

And

Modern Disposal Services, Inc.

(continued)

STATE OF NEW YORK OFFICE OF GENERAL SERVICES

PS913AA

CENTRALIZED CONTRACT FOR RECYCLING & TRASH REMOVAL SERVICES

THIS SECOND AMENDMENT (hereinafter the "Second Amendment") by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") acting pursuant to authority granted under State Finance Law §163, and Modern Disposal Services, Inc., having its principal place of business at 590 Elk St., Buffalo, NY 14210 (hereinafter referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

WHEREAS, the State and Contractor entered into Contract # PS913AA (hereinafter the "Contract") for Recycling & Trash Removal Services; and

WHEREAS, OGS issued periodic recruitment RFP 22760PRB for Recycling & Trash Removal Services on January 11, 2017; and

WHEREAS, Contractor received an award for the following items under periodic recruitment RFP 22760PRB;

Region Number	Region	Lot	Lot Description
15	Erie County	5	Single Stream Recycling
32	Niagara County	5	Single Stream Recycling

and,

WHEREAS, the Parties have agreed to enter this Second Amendment to add awards made as a result of periodic recruitment RFP 22760PRB; and

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each Party hereto from the other, the Parties hereby agree as follows:

1. Attachment 1 *Summary of Lots and Regions Awarded*, is deleted in its entirety and replaced with the Attachment 1 *Summary of Lots and Regions Awarded dated June 6, 2017*, attached hereto and incorporated as if fully set forth at length herein, which includes the items awarded to Contractor periodic recruitment RFP 22760PRB.
2. Except as herein modified, all other terms of Contract # PS913AA shall remain in full force and effect.

Remainder of page intentionally left blank

(continued)

## Signature Page

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the date last written below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Second Amendment being executed simultaneously herewith. The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

### CONTRACTOR

Signature: \_\_\_\_\_

Printed Name: Joseph M. Hickman

Title: Director of Sales

Company Name: Modern Disposal Services, Inc.

Date: July 20, 2017

Federal ID: 16-0875858

NYS Vendor ID: 1000014982

### THE PEOPLE OF THE STATE OF NEW YORK

Signature: \_\_\_\_\_

Printed Name: TODD GARDNER

Title: CMS 3

Office of General Services

Date: \_\_\_\_\_

(continued)

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF New York }

: **Sworn Statement:**

COUNTY OF Niagara }

On the 20<sup>th</sup> day of July in the year 2017, before me personally appeared **JOSEPH M. HICKMAN**, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at

Modern Disposal Services, Inc.

and further that:

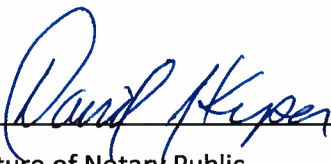
**[Check One]**

(☐ **If an individual**): \_he executed the foregoing instrument in his/her name and on his/her own behalf.

(☒ **If a corporation**): \_he is the Director of Sales of Modern Disposal Services, Inc. the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, X he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, X he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ **If a partnership**): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ **If a limited liability company**): \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

  
Signature of Notary Public

DAVID J. KYSER  
Notary Public - State of New York  
No. 01KY4923301  
Qualified in Niagara County  
My Commission Expires 3/3/18

Notary Public Registration No. \_\_\_\_\_

State New York

(continued)



Office of  
General Services

ANDREW M. CUOMO  
Governor

ROANN M. DESTITO  
Commissioner

June 22, 2016

Mr. Joseph Hickman  
Modern Disposal Services, Inc.  
4746 Model City Rd.  
Model City, NY 14107

RE: Group 79013, Award 22760-SW Recycling & Trash Removal Services

Dear Mr. Joseph Hickman

Please be advised, The Office of General Services will be changing your Master Contract Number from PS21700, to PS913AA.

This change is necessary to accommodate all NYS Contract Users' ability to enter their assigned mini-bid contract number in the Statewide Financial System (SFS).

**CONTRACTOR** (To be completed by Authorized Signatory)

Signature: \_\_\_\_\_

Printed Name: Joseph M. Hickman

Title: Sales & Municipal Accounts Manager

Company Name: Modern Disposal Services, Inc.

Federal ID: 16-0875858

NYS Vendor ID 1000014982

Date: July 6, 2016

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature: \_\_\_\_\_

Printed Name: TODD GARDNER

Title: CMS 3

Office of General Services

Date: 7/13/2016



**Office of  
General Services**

**Procurement  
Services**

New York State Contract #

**PS21700**

*(for State use only)*

**CENTRALIZED CONTRACT FOR**

**RECYCLING AND TRASH REMOVAL SERVICES**

**BETWEEN**

**THE NEW YORK STATE OFFICE OF GENERAL SERVICES**

**AND**

**MODERN DISPOSAL SERVICES, INC.**

**THIS AGREEMENT** (hereinafter the “Contract,” “Centralized Contract,” “Master Contract” or the “Agreement”) is made by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is on the 41st Floor, Corning Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or the Office of General Services (“OGS”)) and Modern Disposal Services, Inc., having its principal place of business at 4746 Model City Road, Model City, NY, 14107 (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

**WHEREAS**, OGS is statutorily authorized to enter into Centralized Contracts for services for use by Authorized Users; and

**WHEREAS**, OGS has identified a need by Authorized Users for Recycling and Trash Removal Services, as further described herein; and

**WHEREAS**, OGS provided notification of availability of a multi-award competitive periodic recruitment Request for Proposals (RFP) for vendors that provide Recycling and Trash Removal Services by placing a notice in the October 24, 2014 edition of the New York State Contract Reporter; and

**WHEREAS** the RFP was structured with 17 separate lots, dependent upon the nature of the services provided, and 63 separate geographic regions; and

**WHEREAS**, this Centralized Contract sets forth a two-step process for each transaction. The first step is the establishment of the Centralized Contract, through a competitive periodic recruitment process. The second step is also competitive, and is based on the development of a specific Project Definition by an Authorized User in accordance with the Centralized Contract terms. The Project Definition will then be distributed to Contractors based on specific regions, via the Mini-Bid process, with award being made based on lowest price. The Mini-Bid award will result in a Mini-Bid Contract; and

**WHEREAS**, OGS has determined that the Contractor submitted a best-value responsive proposal for the Lot(s) and Region(s) awarded, that the Contractor is a responsible vendor, and that the Contractor is willing to provide the Recycling and Trash Removal Services identified in Attachment 1, *Summary of Lots and Regions Awarded*, under the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

(continued)

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**APPENDIX A (Standard Clauses for New York State Contracts)**

**APPENDIX B (Office of General Services General Specifications)**

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**Attachments**

- 1. Summary of Lots and Regions Awarded**
- 2. Certification of Tipping and/or Recyclable Processing Fees**
- 3. Insurance Requirements**
- 4. Project Definition Template**

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## SECTION 1: INTRODUCTION

### 1.1 SCOPE

This Master Contract is executed by the New York State Office of General Services (OGS), a New York State (NYS) agency authorized by law to issue Centralized Contracts for use by NYS Agencies and other Authorized Users.

This Contract is a Centralized Contract to provide Recycling and Trash Removal Services to NYS Authorized Users, by Lot and Region. Further information regarding Lots, Regions, and Pricing can be found in the following sections: Sections 2.20, *Recycling and Trash Removal Services*, 2.24, *Regions*, and 2.22, *Pricing*. The specific Lots and Regions awarded to Contractor may be found in Attachment 1 – *Summary of Lots and Regions Awarded*

This Centralized Contract establishes a set of standardized terms and conditions, guidelines, and a template for the award of Recycling and Trash Removal Services, at the Authorized User transactional level, through a Mini-Bid process. The Contractor agrees to the terms and conditions set forth in this Centralized Contract and the Contractor is willing to provide such services as set forth herein to Authorized Users.

This Centralized Contract sets forth a two-step process for each transaction. The first step was the establishment of this Master Contract. The second step will be competitive, based on the development of a specific Project Definition by an Authorized User in accordance with the contractual terms. Recycling and Trash Removal needs will be identified by an Authorized User, and documented in a Project Definition. The Project Definition will then be distributed to Contractors based on specific Regions, via the Mini-Bid process. A Mini-Bid award shall be based on lowest price.

The Mini-Bid award will result in a Mini-Bid Contract for Recycling and Trash Removal Services between Contractor and the Authorized User. Each Mini-Bid Contract will be governed by the terms and conditions specified herein and by terms and conditions added to the Authorized User Mini-Bid.

### 1.2 ESTIMATED QUANTITIES

This Contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) Contract. All quantities or dollar values listed within this Contract are estimates.

Numerous factors could cause the actual volume of sales under this Contract to vary substantially from the estimates. Such factors include, but are not limited to, the following:

- This Contract is a nonexclusive Contract;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of the Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the Contract period; and,
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.

In Procurement Services's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual Contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual Contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from any estimates provided in this Contract.

The historical dollar value of all contracts awarded under the previous award for Rubbish Removal (Group 79013, Award 18850) was approximately \$4.5 million per year, but please note that this award did not contain the recycling lots included in RFP 22760.

### 1.3 DEFINITIONS

**Agency or Agencies:** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

**Authorized User's Representative:** Shall mean the authorized representative of an Authorized User that is identified as such in a Project Definition and/or in the Mini-Bid Contract.

**Bins:** Refers to small containers less than 1 cubic yard in size that includes totes, toters, gondolas, recycling bins, recycling carts or other waste containers.

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**Bulky Wastes:** Large items of solid waste including but not limited to white goods, furniture, mattresses, large auto parts, stumps, trees, branches and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

**Business hours:** Shall mean Monday through Friday, between the hours of 8:00 A.M. and 5:00 P.M. EST, except New York State Holidays.

**Business day:** A State business day is defined as any calendar day, exclusive of Saturdays, Sundays, State recognized legal holidays, and such other holidays or State office closings as directed by the Governor.

**Comingled Recycling (Single Stream):** Glass, metal, paper and plastic set out in the same recycling container.

**Compostable Material:** Solid organic waste that may be decomposed under controlled conditions by micro-organisms under aerobic or anaerobic conditions which result in a stable humus-like material (e.g., food wastes or green wastes).

**Composting:** The process by which biological decomposition of organic solid waste is carried out under controlled aerobic conditions, and which stabilizes the organic fraction into a material which can easily and safely be stored, handled and used in an environmentally acceptable manner. The presence of anaerobic zones within the composting material will not cause the process to be classified as other than composting.

**Composting facility:** A solid waste management facility where solid waste is processed using composting technology. Processing may include physical turning, windrowing, aeration or other mechanical handling of organic matter.

**Construction and Demolition Debris:** Uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of utilities, structures and roads; and uncontaminated solid waste resulting from land clearing. Such waste includes, but is not limited to bricks, concrete and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles and other roof coverings, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, empty buckets ten gallons or less in size and having no more than one inch of residue remaining on the bottom, electrical wiring and components containing no hazardous liquids, and pipe and metals that are incidental to any of the above.

**Corrugated Cardboard:** Un-waxed boxes or shipping containers with a ruffled inner liner.

**Disposal Facility:** A facility or part of a facility at which solid waste disposal occurs.

**Dual Stream Recycling:** Varieties of paper collected together in one recycling bin (one stream); plastic, glass and metal recyclables collected in another recycling bin (the other stream).

**Dumpsters:** A trash receptacle designed to be hoisted and emptied onto a truck.

**Facility Manager:** The Authorized User's representative who is responsible for the day to day operations of the facility(s) referenced in the Project Definition.

**Food Waste:** Uneaten food and food preparation wastes from residences, cafeterias, commercial establishments and institutional sources.

**Glass Containers:** Green, blue, brown and clear glass bottles and jars (soda-lime glass) but excluding light bulbs, Pyrex cookware, plate glass, drinking glasses, windows, windshields and ceramics.

**Green Waste:** Biodegradable waste that can be composed of plant material such as grass or flower cuttings, hedge trimmings and brush less than 1 inch in diameter.

**Haul Charge:** A fee charged by the Contractor for the pick-up of a compactor or roll-off container, disposal of the waste and return of the compactor or roll-off container.

**Landfill:** Landfill means land or a disposal facility or part of one where solid waste or its residue after treatment is intentionally placed and which is not a land application facility, surface impoundment, injection well or waste pile.

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**Local Recycling Law or Ordinance:** All municipalities in New York State have their own local law or ordinance requiring the source separation of economically feasible materials in which all entities in that community must comply.

**MWBE:** A business certified with New York State Empire State Development (ESD) as a Minority and/or Women-owned Business Enterprise.

**Master Contract:** This document, including all attachments and appendices, which constitutes the Centralized Contract between Contractor and the State of New York for Recycling and Trash Removal Services. May also be referred to simply as the Contract.

**Master Contract Unit Price:** The unit prices awarded for the Master Contract.

**May:** Denotes the permissive in a contract clause or specification. “May” does not mean “required.” Also see “Shall” and “Must.”

**Metal Containers:** All aluminum, steel or bi-metal beverage and food containers.

**Mini-Bid:** The competitive bidding of an Authorized User’s Project Definition that results in a Mini-Bid Contract.

**Mini-Bid Contract:** The agreement between the Contractor and the Authorized User which results from the competitive bidding of an Authorized User’s Mini-Bid Project Definition. A Mini-Bid Contract consists of the Master Contract, the Authorized User’s Mini-Bid Project Definition and the Contractor’s response to the Mini-Bid Project Definition, as accepted by the Authorized User.

**Mini-Bid Unit Price:** The unit prices awarded for a Mini-Bid Contract.

**Mixed Paper:** A variety of paper including but not limited to office paper, newsprint, magazines, junk mail and paperboard products. This excludes tissue paper, toweling, paper plates and cups, wax coated corrugated cardboard and other low-grade paper products which become unusable to paper mills as a result of normal intended use.

**Municipal Solid Waste:** Any residential or commercial solid waste consisting of everyday items discarded by the public and collected and disposed of as part of a normal municipal solid waste collection service. Municipal Solid Waste does not include hazardous waste, medical waste, combustion ash generated by resource recovery facilities or municipal incinerators or waste material from manufacturing or processing operations.

**Must:** Denotes the imperative in a contract clause or specification. “Must” is synonymous with “required.” Also see “Shall” and “May”.

**NYS Vendor ID:** The ten-character identifier issued by New York State when a vendor is registered in the Vendor File.

**New York State Procurement Services (PS):** The division of the New York State Office of General Services, formerly known as New York State Procurement or NYSPRO, which is authorized by law to issue centralized, statewide contracts for use by Authorized Users.

**OGS:** Means the New York State Office of General Services.

**On-site:** Refers to any space owned or leased by the Authorized User or which is open to the public at which the Authorized User’s business operations are conducted.

**Plastic Bottles:** All narrow neck plastic containers.

**Prevailing Wage Rate:** as part of the requirements of Article 8 (Sections 220-223) and Article 9 (Sections 230-239) of the New York State Labor Law, requires public work Contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed. Prevailing wage requirements for this Contract are contained herein.

**Project Definition:** A specific need for trash removal and/or recycling services, which is detailed in writing by an Authorized User and used to solicit Mini-Bids from Contractors. All terms and conditions of this Contract will apply to the Project Definition.

**Recyclable or Recyclable Material:** A material that has the potential to be recycled and which is pre-sorted from solid waste and not contaminated by significant amounts of residuals.

**Recyclable Floor Price:** The minimum price that a Contractor will pay to the Authorized User for a recyclable material.

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**Recyclable Processing Fee:** A fee charged by the Contractor for recycling material at a recycler.

**Recycling:** The processing of used materials into new products in order to prevent waste of potentially useful materials, reduce the consumption of fresh raw materials, reduce energy usage, reduce air and water pollution, reduce the need for "conventional" waste disposal, and lower greenhouse gas emissions compared to virgin production and creates jobs.

**Recycling Revenue:** Revenue generated from the sale of recyclable materials.

**Rental Fee:** A fee charged by the Contractor for the rental of a compactor or roll-off container.

**Revenue Sharing Component:** A component of Contractor's pricing that consists of revenue generated from the sale of recyclables that is shared with the Authorized User.

**Revenue Sharing Percentage:** The percentage of revenue generated from the sale of recyclables that Contractor agrees to pay to an Authorized User.

**Scrap Metal:** Ferrous metals that may include, but are not limited to small appliances, lawn mowers, bicycles, metal furniture, barbecue grills, and automotive parts. For the purposes of this Contract, scrap metal does not include non-ferrous metals such as aluminum, brass, copper or stainless steel.

**Shall:** Denotes the imperative in a contract clause or specification. "Shall" is synonymous with "required." Also see "Must" and "May."

**Solid waste:** All materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludge from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form.

**State:** The State of New York.

**Suitability:** Identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract without undue risk to the interests of the Authorized User.

**Suitability determination:** A suitability determination is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the State (See Section 2.3, *Background Checks*).

**Tipping Fee:** A fee charged for the disposal of waste at a waste processing facility. Tipping fees may also be referred to as Disposal Fees, Dump Fees or Gate Fees.

**White Paper:** All high-grade white paper including, but not limited to, printed materials and copy paper.

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## SECTION 2: SPECIFICATIONS

### 2.1 GENERAL REQUIREMENTS

This is a full service contract. For the purposes of this Contract, ‘full service contract’ shall mean that the bidder's price includes all labor and materials required to provide the Recycling and Trash Removal Services outlined in this Contract and subsequent Project Definitions including but not necessarily limited to the supply, installation, maintenance, cleaning and servicing of the container(s) and the transport of all materials for either disposal and/or recycling; all administrative, reporting or other requirements, and all overhead costs and profit. It shall also include all travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc.

The Contractor is responsible for meeting all licensing and/or permitting requirements within the region that it is operating in. Failure to comply with all licensing and permitting requirements will result in rejection of the Contractor's Mini-Bids for Project Definitions and the region will be removed from the Master Contract and may result in a finding of non-responsibility for the Contractor.

The Authorized User is responsible for providing an adequate base for the placement of equipment and designating any electrical requirements, special restrictions or security requirements in the Project Definition.

This Contract does not permit the Contractor to provide services of abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substances or any bio-med waste (red bag waste). Should Contractor discover any such materials in the products to be disposed of or recycled, the Contractor shall notify the Authorized User immediately, provide them with the location of the waste and the time it was discovered, and the Authorized User shall arrange for the waste to be properly disposed of.

### 2.2 SECURITY REQUIREMENTS

Authorized Users may have ongoing and/or periodic delivery and/or security restrictions that may affect service, particularly at correctional facilities. In addition, Contractor may be required to obtain security badges from the Authorized User for its employees.

Authorized Users shall identify all such restrictions and requirements in the Project Definition, and Contractors are responsible for meeting all security requirements and shall take these restrictions into account when bidding on specific projects. All costs for meeting security requirements shall be included in the prices bid.

### 2.3 BACKGROUND CHECKS

The Requirements of this section shall apply to the Contractor for all Mini-Bid Contracts who will be performing on-site work for the Authorized User unless otherwise specified in the Project Definition.

#### **Applicability:**

- (1) Contractors shall perform background checks and make suitability determinations on the Contractor's employees before the individual employees can perform on-site Contract services for the Authorized User.
- (2) The Contractor shall maintain a continuous list of background checks and suitability determinations noted above, and shall provide this list to the Authorized User's Facility Manager prior to the Mini-Bid Contract commencement date. The list shall be updated and resubmitted to the Facility Manager as changes occur, continually keeping the Facility Manager updated.
- (3) The Authorized User, on a case by case basis, may, either temporarily or permanently, waive the requirements of this clause, in whole or in part, if they determine in writing that background checks and suitability determinations are not necessary at a specific location or for a specific individual.

#### **Background Checks:**

The Contractor is responsible, at its own expense, for completing background checks and making suitability determinations on its employees prior to the employee beginning any on-site work, and to making them available to the Authorized User when requested. Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a Contractor's employee clearance to secured areas.

At a minimum, the background check and suitability determination must include an evaluation of:

1. Verification that the individual is not listed on a national watched person database. The following link has information about data available. <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. The following link has a PDF file of a list of SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS: <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>;

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2. Criminal History checks (using a national database that contains criminal histories and supplement this search by checks of NYS Office of Court Administration and comparable searches of states where the person has lived, worked or attended school during the past 5 years) Or by obtaining the record of convictions from NYSOCA directly and from their equivalents from other states where the person might have lived, worked or attended school during the last 5 years;
3. DMV driving records;
4. Social Security Number trace;
5. Verification of U.S. citizenship or legal resident status; and
6. Residence (past 3 years) (should be requested on employment application to compare against data from DMV license and other searches for verification);

**Background Check Guidelines:**

In making a suitability determination, the Contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to Authorized Users:

1. Any loyalty or terrorism issue;
2. Patterns of conduct (e.g., alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);
3. Dishonorable military discharge;
4. Felony and misdemeanor offenses;
5. Drug manufacturing/trafficking/sale;
6. Major honesty issue (e.g., extortion, armed robbery, embezzlement, perjury);
7. Criminal sexual misconduct;
8. Serious violent behavior (e.g., rape, aggravated assault, arson, child abuse, manslaughter);
9. Illegal use of firearms/explosives; and
10. Employment related misconduct involving dishonesty, criminal or violent behavior.

The Contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

1. The nature, extent and seriousness of the conduct;
2. The circumstances surrounding the conduct;
3. The frequency and recentness of the conduct;
4. The individual's age and maturity at the time of the conduct;
5. The presence or absence of rehabilitation and other pertinent behavior changes;
6. The potential for pressure, coercion, exploitation, or duress;
7. The likelihood of continuation of the conduct;
8. How, and if, the conduct bears upon potential job responsibilities; and
9. The employee's employment history before and after the conduct.

**Each suitability determination should be documented in a narrative. If negative items are mitigated by subsequent passage of time or completion of substance abuse programs this rationale should be included in the narrative. A negative suitability determination must be supported by a finding that the adverse information has a direct bearing on the potential job duties or that it is deemed sufficiently serious to bar the employee from a State site.**

**Employee Removal:**

Whenever a Contractor becomes aware that any employee working at an on-site location becomes an unacceptable risk to the Authorized User the Contractor shall immediately remove that employee from the site, notify the Authorized User that such a removal has taken place, and replace them with a qualified substitute. If the approval of the Authorized User was initially required for the removed employee, then approval is required for the replacement employee.

**Authorized User Notification**

Prior to commencement of on-site Contract performance, the Contractor shall notify the Authorized User that the background checks and suitability determinations required by this clause have been completed for affected individuals.

**Uniforms and Security Badges:**

All Contractor employees must be provided with company uniforms containing an identifiable company logo. The uniform requirement will at a minimum be an identifiable shirt or smock which must be worn at all times while on premises performing duties. If security badges are required by the Authorized User, these must be worn by the employees at all times and be presented to the Authorized User upon request.

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**2.4 REQUIREMENTS FOR BINS**

Unless otherwise specified, all Bins shall be equipped with wheels and handles for easy movement and shall be equipped with a lid. All Bins shall be water tight, rodent and insect free, maintained in a sanitary and clean condition at all times and shall contain no jagged edges or holes. All Bins shall be capable of safely handling the weight of the materials placed in them and shall be easy to maneuver by a single person.

**2.5 REQUIREMENTS FOR DUMPSTERS**

Dumpsters (examples include side, front end or rear end loaded) shall be placed and located in a manner satisfactory to the Facility Manager. Unless otherwise specified by the Authorized User all Dumpsters shall be equipped with tight fitting steel or plastic lids. All dumpsters shall have no leaks, jagged edges or holes.

**2.6 REQUIREMENTS FOR COMPACTORS**

Compactors include stationary and self-contained units. All units provided for the compaction of wet waste shall be self-contained and water-tight. All compactors shall be maintained in good working order and shall have no leaks, jagged edges or holes.

The Authorized User shall be responsible for the construction of any concrete pads or other ancillary structures such as catwalks that are needed for the compactor, and the Contractor shall be responsible for the installation of all other compactor components.

**2.7 REQUIREMENTS FOR ROLL-OFF CONTAINERS**

All roll-off containers shall be all-metal, be in good condition and if requested by the Authorized User shall be equipped with a tight fitting screened or solid cover operated by a functional winch system that is maintained in good repair. For recycling lots, roll-off containers shall be fully enclosed and waterproof unless otherwise specified by the Authorized User. The Authorized User may specify additional requirements in the Project Definition.

If an open-top container is specified for either the disposal or recycling of construction and demolition materials, the Authorized User shall be allowed to retain the roll-off on site for either the minimum number of days specified in the Mini-Bid Project Definition or for a minimum of 10 business days, which is greater.

**2.8 ON-SITE WORK**

Services performed on-site by Contractor's employees, subcontractors or agents shall be rendered in accordance with the following requirements:

1. The Contractor is responsible for taking all necessary precautions to avoid damage to the Authorized User's equipment or facilities. Should any damage occur due to the Contractor's operations, the Contractor shall immediately notify the Facility Manager, and shall repair/replace the damaged property at the Contractor's own expense.
2. The Contractor is completely responsible for its work, including any damages or breakdowns caused by its negligence.
3. The Contractor is required to follow all applicable facility rules and regulations.
4. Upon notification by the Authorized User of Mini-Bid Contract award, the Contractor shall assist in selecting optimum equipment type/size, pick up frequencies; and the schedule for installation/delivery of equipment. This information shall be summarized in a 'Schedule of Work' which will be submitted to the Authorized User for their review and approval prior to the start of the work.
5. In a Project Definition where multiple pick-up locations are specified, a method of communication (i.e. cell phone, walkie-talkie, etc.) shall be provided to the Authorized User for direct communication with the driver, call center or centralized dispatch.
6. If, at a multi-location site, one or more pick-ups are missed, the Contractor is to return to the site and service the missed pick-up(s) within 24 hours at no additional cost to the Authorized User.
7. Containers shall be emptied on all scheduled days, generally between the hours of 8:00 a.m. to 5 p.m. However, the exact day and expected time of each collection shall be as specified by the Facility Manager or other appropriate authority responsible for the operation of the collection site facility. At the discretion of the Authorized User, if a collection day falls on a day other than a Business Day, an alternate collection day within the same collection period shall be arranged.
8. The Authorized User or Authorized User's Representative reserves the right to reject and bar from their facilities any employee hired by the Contractor.

**2.9 OSHA (OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION) TRAINING REQUIREMENTS**

The Contractor shall meet the requirements of this section.

**Authorized User's Facility Manager's Obligations**

(continued)

Prior to beginning any Contract work or work assignment, the Authorized User's Facility Manager shall inform the Contractor/Contractor's representative(s) of any known specific hazard(s) and/or chemical(s) they may encounter while performing their Contract obligations. The Contractor/Contractor's Representative(s) shall be responsible for information about the use of Personal Protective Equipment (PPE) required for the work and the use of PPE when required.

**Contractor/Contract Employee Obligations**

Prior to or upon first reporting to the work location for assignment and whenever updates or renewals occur, the Contractor shall present the Facility Manager with proof of completion of the following OSHA required training:

1. Affected Person Lockout/Tagout,
2. Hazard Communication, and
3. The use of Personal Protective Equipment.

**Note:** Contractor failure to provide such documentation to the Authorized User upon or prior to employee reporting to their initial work assignment shall result in the Facility Manager rejecting the employee(s).

**2.10 NEW YORK STATE TOXIC SUBSTANCE ACT (RIGHT TO KNOW LAW)**

In accordance with the New York State Toxic Substance Act and the United States Occupational Safety and Health Administration's *Hazard Communication Standard*, Right to Know/Hazard Communication programs have been implemented by Authorized Users which provide information and training to advise employees of potentially hazardous substances known to be in the workplace.

Before any chemical product is used in the performance of a Mini-Bid Contract, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Facility Manager. Two copies will be required, with one being held by the Contractor and one being provided to the Facility Manager.

**2.11 TRAINING AND EDUCATIONAL OUTREACH**

Following the award of a Mini-Bid Contract and if requested by the Authorized User, the Contractor must provide, at no additional cost, training/education services for Authorized Users. This training shall include, at a minimum, an initial training session to explain the collection system to facility personnel and basic written materials and/or signage to inform employees about appropriate recycling procedures.

**2.12 WASTE COMPOSITION ANALYSIS**

Following the award of a Mini-Bid Contract and if specified in the Mini-Bid Project Definition, the Contractor must provide, at no additional cost, an assessment of the Authorized User's waste stream. The purpose of this assessment is to assist the Authorized User with the characterization of their waste stream, assist them with the development of waste reduction plans and activities to identify opportunities to increase the amount of materials being recycled, and to optimize the use of all containers.

The waste composition analysis shall include, at a minimum, a walk through and visual inspection of the Authorized User's facility and waste stream and a written summary of the inspection results and recommendations for improving the waste collection and/or recycling system.

**2.13 JOB MEETINGS**

Upon award of the Mini-Bid Contract and prior to the start of any work, the Contractor shall be available for an initial job meeting with the Authorized User's representative to discuss the following items:

- a. The Contractor's schedule of work (which must be reviewed and approved by the Authorized User).
- b. A review of all facility use rules.
- c. An introduction for each respective agency organization, chain of command, etc.
- d. A review of the proposed container sizes and pickup frequency to ensure that the equipment provided is being utilized efficiently.
- e. A discussion of opportunities to reduce the amount of solid waste being generated and increase the amount of materials being recycled.

In addition, the Contractor shall be available for subsequent meetings on at least a semi-annual basis to review the following items:

- a. The volume and weight of material being recycled and waste disposed of by type and location as documented in accordance with the requirements of Section 3.7 '*Reporting Requirements*';
- b. The Contractor shall present recommendations to the Authorized User for opportunities to reduce the generation of waste and increase the amount of materials being recycled;
- c. The Contractor shall review the number, sizes and types of containers and offer suggestions for improving efficiencies.

**2.14 SUPPLY, MAINTENANCE AND REPAIR OF CONTAINERS**

The services specified in this Contract require the Contractor to supply, install and maintain all equipment in good working order during the Contract term including cleaning of the containers. The Contractor shall be completely responsible for its work, including any

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damages or breakdowns caused by its failure to take appropriate action, and it is the Contractor's responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes and with the Authorized User's requirements. During winter months, the Contractor shall supply additives to any hydraulic equipment to prevent an interruption of service related to cold weather.

The vendor shall supply containers that meet the Authorized User's specified needs such as rodent or bear proof containers, roll offs with lids, etc.

Should the Authorized User or Contractor decide to keep a scale on site, the maintenance of the scale shall remain with the owner of the scale.

In the event that any repair is found to be necessary, the Authorized User's representative is to be apprised, in writing, of the need for repair. If a container is found to require cleaning or repair the container must, upon notification by the Authorized User to the Contractor, be cleaned or repaired to the Authorized User's satisfaction, or replaced within five (5) business days after notification. If the Contractor fails to respond, the Authorized User may pursue liquidated damages as specified in Section 3.4 *Liquidated Damages*.

The Contractor shall be responsible for the periodic cleaning and sanitizing of all refuse collection containers and the removal of any refuse, oil or other spillage near the Contractor's equipment. If any refuse is spilled from containers during dumping operations it shall be cleaned up prior to the truck leaving the immediate area. In addition all refuse containers shall be sanitized periodically with a germicidal solution on all refuse contact surfaces in such a manner that insects and vermin will not be a nuisance during the time of year when they are prevalent.

## **2.15 EQUIPMENT OWNERSHIP**

The ownership of all equipment provided by the Contractor shall remain with the Contractor, and equipment shall be maintained by the Contractor in accordance with manufacturer recommendations and all Federal (including OSHA), New York State and local codes. The Contractor shall provide and maintain the collection equipment at the Authorized User's facility(s) for use twenty-four hours per day, seven days per week, 365 days per year. If equipment is removed for longer than brief periods for emptying the container, it shall be replaced with equal type and capacity equipment to ensure continuous dumping ability. If not so provided, the Authorized User shall be provided with a rebate for the amount of time they were unable to dump and the Authorized User may seek "Remedies for Breach" as stated in Appendix B. If the equipment is owned by the Authorized User, the Authorized User assumes liability and costs associated with the equipment and a price reduction may be passed along to the Authorized User representing the difference in cost, if any, for the Contractor not having to provide the equipment.

## **2.16 ELECTRICAL CONNECTIONS**

Equipment requiring electrical connections for operation shall either be hard wired to the Authorized User's provided connections or the Contractor shall be responsible for a male electrical union. All connections shall be made by the Contractor and accomplished in accordance with National Electrical Code requirements. Electrically operated equipment shall be available in the following volts and phases:

208 volt 1 or 3 phase, 60 HZ  
220 volt 1 or 3 phase, 60 HZ  
440 volt 1 or 3 phase, 60 HZ

## **2.17 LABELING REQUIREMENTS**

All recycling and/or waste containers shall be marked with the following information, and if requested by the Authorized User it shall be provided in multiple languages (for example English and Spanish):

- The Contractor's name
- The Contractor's dispatch number
- The container size in cubic yards
- The tare weight corresponding to the container size
- The type of recyclable or waste being disposed of (for example 'Trash Only', 'Single Stream Recycling Only', 'Recyclable Paper Only', 'Food Waste/Compostables Only' etc.)

## **2.18 ADDITIONAL PICKUPS**

Authorized Users shall have the right to require the Contractor to provide additional pickups, at the same unit pricing in the Mini-bid Contract, without having to issue a new Project Definition.

## **2.19 EXAMINATION OF CONTRACT DOCUMENTS**

Each Contractor is under an affirmative duty to inform itself by personal examination of the specifications and the conditions under which the Contract is to be executed.

Each Contractor shall examine specifications and all other data or instructions pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the work will be accepted by the Office of General Services and/or the Authorized User as an excuse for any failure or omission on the part of the Contractor to fulfill every

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detail of all the requirements of the documents governing the work. Contractor will not be allowed any extra compensation by reason of any matter or thing concerning which such Contractor might have fully informed itself prior to bidding and executing the Contract.

## **2.20 RECYCLING AND TRASH REMOVAL SERVICES**

The Lots specified in Attachment 1 *Summary of Lots and Regions Awarded* are within the scope of this Contract. Descriptions of all Lots included in the RFP are set forth below.

### **2.20.1 TRASH REMOVAL SERVICES**

For all lots requiring the provision of Trash Removal Services, the Contractor is required to provide appropriately sized collection containers, provide service for the container (including all maintenance) and provide transportation of all waste materials to an appropriate facility for disposal.

#### **Lot 1 – Disposal of Municipal Solid Waste in Bins, Dumpsters or Roll-off Containers**

This lot is for the disposal of municipal solid waste which includes but is not limited to mixed waste, office waste and food waste in bins, rear or front end loaded dumpsters or roll-off containers. All waste collected under this lot must be transported to a waste processing facility for disposal.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

#### **Lot 2 – Disposal of Municipal Solid Waste in Compactors**

This lot is for the disposal of municipal solid waste which includes but is not limited to mixed waste, office waste and food waste in compactors. All waste collected under this lot must be transported to a waste processing facility for disposal.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Compactors – 20 to 40 cubic yard capacity

#### **Lot 3 – Disposal of Construction & Demolition (C&D) Materials**

This lot is for the disposal of construction and demolition materials which are generated during renovation or demolition work and includes but is not limited to aggregates such as concrete, asphalt, asphalt shingles, gypsum wallboard, wood and metals. C&D materials often contain bulky, heavy materials and salvaged building components. All C&D materials are kept separate from other wastes and are delivered to an appropriate landfill for disposal. This lot is intended for waste materials generated by the day to day activities or small reconstruction projects undertaken by Authorized Users and is not intended for use with large scale construction projects.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Roll Off Containers – 20 to 40 cubic yard capacity

#### **Lot 4 – Disposal of Loose or Bulky Non-Recyclable Municipal Solid Waste**

This lot is for the disposal of loose or bulky Municipal Solid Waste (MSW) that is either unusually large in size including but not limited to furniture, mattresses, large auto parts, stumps and tree branches or consists of loose or bagged municipal solid waste. The Contractor is responsible for picking up and transporting all waste to a facility for disposal, and payment will be made per cubic yard of solid waste. Pick-up agreements identifying frequency, types and quantities of waste removed must be made between the Contractor and the Authorized User prior to the start of the work.

1. Item 1: Loose or Bulky Municipal Solid Waste - The Contractor shall provide pricing for this lot on a Per Cubic Yard basis.

### **2.20.2 RECYCLING SERVICES**

For all lots requiring the provision of Recycling Services, the Contractor is required to provide appropriately sized collection containers, provide service for the container (including all maintenance) and provide transportation of all recyclables to an appropriate facility for recycling. All materials collected under these lots must be delivered for recycling, and the Contractor must be capable of certifying that the material was delivered for processing and was not disposed of as solid waste at a landfill or incinerator.

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**Lot 5 – Single Stream Recycling**

This lot is for the recycling of comingled recyclables which include but are not limited to newspapers, flat cardboard, paper products, cans, bottles, plastics, aluminum and junk mail which are collected and delivered to a Recycler where they are sorted into various commodity streams and recycled. The Contractor shall be responsible for providing appropriate sized containers for single stream materials, servicing the containers and delivering all materials to the Recycler.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

**Lot 6 – Recycling of Comingled Recyclables, Excluding Paper Products (for Dual Stream Recycling)**

This lot is for the recycling of comingled recyclables where paper products such as newspaper, magazines, flat cardboard and office paper have been removed. For the purposes of this lot comingled items include but are not limited to aluminum & steel food containers, glass jars & bottles and plastic containers. The comingled items are kept separate and taken to a Recycler where the material is sorted into various commodity streams and recycled. This lot is intended to be used along with lots for the recycling of paper products to create a Dual Stream Recycling system.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

**Lot 7 – Recycling of Metal Food Containers**

This lot is for the recycling of aluminum, steel or bi-metal beverage and food containers including but not limited to aluminum or steel cans, aluminum or steel food containers, aluminum foil, and metal lids and caps. The materials are kept separate from other recyclables or waste and are delivered to a Recycler where they will be recycled.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

**Lot 8 – Recycling of Glass Containers**

This lot is for the recycling of clear, green and amber glass bottles and jars. The materials are kept separate from other recyclables or waste and are delivered to a Recycler where they are recycled.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

**Lot 9 – Recycling of Plastics**

This lot is for the recycling of #1 and #2 plastics. These materials are kept separate from other recyclables or waste and are delivered to a Recycler where they are recycled. This lot may also include #3 through #7 plastics provided that the Vendor's Recycler accepts these materials.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

**Lot 10 – Recycling of Corrugated Cardboard**

This lot is for the recycling of corrugated cardboard. All corrugated cardboard must be uncontaminated (it must not contain grease, food stains or any wax coatings) and flattened. The materials are kept separate from other recyclables or waste and are delivered to a Recycler where they are recycled.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

**Lot 11 – Recycling of Mixed Paper**

(continued)

This lot is for the recycling of mixed paper which includes but is not limited to newspapers, magazines, junk mail, catalogs, office paper, colored paper, paperboard packaging, brown bags and phone books. In addition this lot may also include high grade paper products (white paper). The materials are kept separate from other recyclables or waste and are delivered to a Recycler where they are recycled.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

#### **Lot 12 – Recycling of High Grade Office Paper (White Office Paper)**

This lot is for the recycling of high-grade paper which includes but is not limited to white ledger (including white computer paper, letterhead, white notebook paper and white envelopes) and tab cards. The materials are kept separate from other recyclables or waste and are delivered to a Recycler where they are recycled.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

#### **Lot 13 – Recycling of Scrap Metal**

This lot is for the recycling of ferrous scrap metal which may include metal goods such as metal furniture, lawn mowers, barbecue grills, bicycles, appliances, automotive parts, metal roofing, scrap steel plate and steel pipe. This lot is not intended for the recycling of non-ferrous, precious metals such as aluminum, copper, brass or stainless steel. All scrap metals collected under this lot must be delivered for recycling.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Roll Off Containers – 20 to 40 cubic yard capacity

#### **Lot 14 – Shredding and Recycling of Mixed Paper**

This lot is for off-site office paper shredding and recycling services. The Contractor must be capable of providing appropriate procedures to ensure the complete confidentiality of materials throughout the process and must be able to provide Authorized Users with a certificate of destruction. Contractors must provide secure containers at the Authorized User's facility(s) for the storage of paper to be shredded, service the containers as needed, shred the materials offsite and then deliver them to a Recycler for recycling.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Secure Bins – 1 cubic yard capacity or smaller

#### **Lot 15 - Composting of Green Waste**

This lot is for the composting of Green Waste which includes but is not limited to grass clippings, weeds, garden materials, leaves, shrub trimmings, brush and small branches (thickness of 1 inch in diameter or less). The materials are kept separate from other recyclables or waste and are delivered to a composting facility where they will be converted into compost.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Dumpsters – 2 to 10 cubic yard capacity
2. Item 2: Roll-Off Containers – 20 to 40 cubic yard capacity

#### **Lot 16 - Composting of Food Wastes and Organics**

This lot is for the composting of food wastes and organics such as food scraps (bread, fruits, eggshells, meats, vegetables, etc.), coffee grounds, paper milk cartons, paper towels, napkins, paper plates, pizza boxes and tea bags. The materials are kept separate from other recyclables or waste and are delivered to a composting facility where they will be converted into compost. If required, Authorized Users are responsible for placing the food wastes and organics into compostable bags.

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Bins – 1 cubic yard capacity or smaller
2. Item 2: Dumpsters – 2 to 10 cubic yard capacity
3. Item 3: Roll-Off Containers – 20 to 40 cubic yard capacity

#### **Lot 17 – Recycling of Construction and Demolition (C&D) Materials**

This lot is for the recycling of recoverable construction and demolition materials which are generated during renovation or demolition work and includes but is not limited to aggregates such as concrete, asphalt, asphalt shingles, gypsum wallboard, wood and metals. C&D materials often contain bulky, heavy materials and salvaged building components. All C&D materials are kept separate from other wastes and are delivered to a C&D recycler where the material is recycled. This lot is intended for use for waste materials generated by the day to day activities or small reconstruction projects undertaken by Authorized Users and is not intended for use with large scale construction projects.

(continued)

Pricing for this lot shall be provided for the following container types and sizes:

1. Item 1: Roll Off Containers – 20 to 40 cubic yard capacity

## 2.21 RECYCLING LOTS THAT CONTAIN A REVENUE SHARING COMPONENT

Lots 5 through 13 contain a Revenue Sharing Component which shall be paid by the Contractor to the Authorized User on a monthly basis in the form of a credit against the amount due to the Contractor as shown on the Contractor's monthly invoice. In order to ensure that proper documentation is provided to the Authorized User, the credit for the previous month's recycling may be applied to the invoice for the current month's service.

The amount paid to the Authorized User shall be determined by multiplying the Revenue Sharing Percentage by either the Recyclable Floor Price awarded or the actual sale price that the recycler receives for the recyclable materials, whichever is greater. The Recyclable Floor Price and Revenue Sharing Percentage are listed in Attachment 1 – Summary of Lots and Regions Awarded. Should the value of the recyclables fall below the Recyclable Floor Price the amount paid to the Authorized User shall be based on the Floor Price.

All invoices for Lots containing a Revenue Sharing Component shall be accompanied by acceptable documentation showing the actual weight of material recycled, the actual revenue generated by the recyclables (including the price per ton and total revenue), and the Revenue Sharing amount either paid or credited to the Authorized User. Examples of acceptable documentation are a bill of sale for the materials listing the date of the sale, the type of materials sold, the material weights, the price obtained and the names of both the buyer and seller. Failure to include acceptable documentation with the monthly invoice may result in non-payment of the invoice by the Authorized User.

## 2.22 PRICING

Pricing shall include the cost of meeting all specifications contained in this Contract and will include two prices. The first are prices under this Contract, contained in Attachment 1 – *Summary of Lots and Regions Awarded* (referred to as Master Contract Unit Prices) and the second are prices submitted during responses to Mini-Bids which are let in the future (referred to as Mini-Bid Unit Prices). The Master Contract Unit Prices apply to the entire range of container sizes listed for each item specified in the lot descriptions. The Mini-Bid Unit Prices are the prices bid for specific Project Definitions using the lots, items, number of containers, container sizes and pickup frequency specified by the Authorized User.

For all Unit Pricing the prices bid during the Mini-Bid shall be less than or equal to the corresponding Unit Prices awarded for the Master Contract with the exception of the Recyclable Floor Price and Revenue Sharing Percentage, for which the prices bid during the Mini-Bid must be equal to or greater than the corresponding Unit Prices awarded for the Master Contract. At no time during the term of a Mini-bid contract may the Mini-bid Contract unit pricing exceed the prevailing Master Contract unit pricing.

For Mini-Bids that include a Roll-Off container or a Compactor that is rented for less than one month, the Mini-Bid Rental Fee Unit Price cannot exceed the Master Contract Rental Fee Unit Price on a prorated basis.

If, during the term of an awarded Mini-Bid, it becomes necessary to change the container size, number of containers or pickup frequency, service may be continued under the existing contract without performing a new Mini-Bid provided that the pricing does not exceed the awarded Mini-Bid unit prices.

Contract pricing for awarded Mini-Bids shall be determined in accordance with the following with all Unit Prices referring to the awarded Mini-Bid Unit Prices:

### Lot 1 – Disposal of Municipal Solid Waste in Bins, Dumpsters or Roll-off Containers

Item 1, Bins 1 CY or smaller

Contract Pricing = (Unit Price Bid) x (P)

Where Unit Price Bid = Price bid per container per pickup

P = Number of Pickups

Item 2, Dumpsters 2 to 10 CY

Contract Pricing = (Unit Price Bid) x (S) x (P)

Where Unit Price Bid = Price per cubic yard of container per pickup

S = The Size of the dumpster (in cubic yards)

P = Number of Pickups

Item 3, Roll-Off Containers 20 to 40 CY

Contract Pricing = (RF) + (TF x W) + (HC x P)

Where RF = Rental Fee

TF = Tipping Fee (dollars per ton)

W = Weight of materials disposed of (tons)

HC = Haul Charge (per pickup)

P = Number of Pickups

### Lot 2 – Disposal of Municipal Solid Waste in Compactors

(continued)

Item 1, Compactors 20 to 40 CY

Contract Pricing = (RF) + (TF x W) + (HC x P)

Where RF = Rental Fee  
 TF = Tipping Fee (dollars per ton)  
 W = Weight of materials disposed of (tons)  
 HC = Haul Charge (per pickup)  
 P = Number of pickups

**Lot 3 – Disposal of Construction & Demolition (C&D) Materials**

Item 1, Roll-Off Containers 20 to 40 CY

Contract Pricing = (RF) + (TF x W) + (HC x P)

Where RF = Rental Fee  
 TF = Tipping Fee (dollars per ton)  
 W = Weight of materials disposed of (tons)  
 HC = Haul Charge (per pickup)  
 P = Number of pickups

**Lot 4 – Disposal of Loose or Bulky Non-Recyclable Municipal Solid Waste**

Item 1, Loose or Bulky MSW

Contract Pricing = (Unit Price Bid) x (V) x (P)

Where Unit Price Bid = Price per cubic yard per pickup  
 V = Volume of trash (in cubic yards)  
 P = Number of Pickups

For Lots 5 through 13, Recycling Revenue (RR) is defined as either the Recyclable Floor Price or the actual sale price of the recyclable materials (in dollars per ton), whichever is greater.

**Lot 5 – Single Stream Recycling in Bins, Dumpsters or Roll-off Containers**

**Lot 6 – Recycling of Comingled Recyclables Excluding Paper Products**

**Lot 7 – Recycling of Metal Food Containers**

**Lot 8 – Recycling of Glass Containers**

**Lot 9 – Recycling of Plastics**

**Lot 10 – Recycling of Corrugated Cardboard**

**Lot 11 – Recycling of Mixed Paper**

**Lot 12 – Recycling of High Grade Office Paper (White Paper)**

Item 1, Bins 1 CY or smaller

Contract Pricing = (Unit Price Bid) x (P) + (RPF x W) – (RR x RSP x W)

Where Unit Price Bid = Price per container per pickup  
 P = Number of Pickups  
 RPF = Recyclable Processing Fee (dollars per ton)  
 W = Weight of the recyclables (tons)  
 RR = Recycling Revenue (dollars per ton)  
 RSP = Revenue Sharing Percentage

Item 2, Dumpsters 2 to 10 CY

Contract Pricing = (Unit Price Bid) x (S) x (P) + (RPF x W) – (RR x RSP x W)

Where Unit Price Bid = Price per cubic yard of container per pickup  
 S = The Size of the container (in cubic yards)  
 P = Number of Pickups  
 RPF = Recyclable Processing Fee (dollars per ton)  
 W = Weight of the recyclables (tons)  
 RR = Recycling Revenue (dollars per ton)  
 RSP = Revenue Sharing Percentage

Item 3, Roll-Off Containers 20 to 40 CY

Contract Pricing = (RF) + (HC x P) + (RPF x W) – (RR x RSP x W)

Where RF = Rental Fee  
 HC = Haul Charge (per pickup)  
 P = Number of pickups  
 RPF = Recyclable Processing Fee (dollars per ton)  
 W = Weight of the recyclables (tons)  
 RR = Recycling Revenue (dollars per ton)  
 RSP = Revenue Sharing Percentage

**Lot 13 – Recycling of Scrap Metal**

Item 1, Roll-Off Containers 20 to 40 CY

(continued)



$$\text{Contract Pricing} = (\text{RF}) + (\text{HC} \times \text{P}) + (\text{RPF} \times \text{W}) - (\text{RR} \times \text{RSP} \times \text{W})$$

Where RF = Rental Fee  
 HC = Haul Charge (per pickup)  
 P = Number of pickups  
 RPF = Recyclable Processing Fee (dollars per ton)  
 W = Weight of the recyclables (tons)  
 RR = Recycling Revenue (dollars per ton)  
 RSP = Revenue Sharing Percentage

**Lot 14 – Shredding and Recycling of Mixed Paper**

Item 1, Secure Bins 1 CY or smaller

$$\text{Contract Pricing} = (\text{Unit Price Bid}) \times (\text{P})$$

Where Unit Price Bid = Price per container per pickup  
 P = Number of Pickups

**Lot 15 – Composting of Green Waste**

Item 1, Dumpsters 2 to 10 CY

$$\text{Contract Pricing} = (\text{Unit Price Bid}) \times (\text{S}) \times (\text{P})$$

Where Unit Price Bid = Price per cubic yard of container per pickup  
 S = The Size of the container (in cubic yards)  
 P = Number of Pickups

Item 2, Roll-Off Containers 20 to 40 CY

$$\text{Contract Pricing} = (\text{RF}) + (\text{PF} \times \text{W}) + (\text{HC} \times \text{P})$$

Where RF = Rental Fee  
 PF = Processing Fee (per ton)  
 W = Weight of materials composted (tons)  
 HC = Haul Charge (per pickup)  
 P = Number of pickups

**Lot 16 – Composting of Food Wastes and Organics**

Item 1, Bins 1 CY or smaller

$$\text{Contract Pricing} = (\text{Unit Price Bid}) \times (\text{P})$$

Where Unit Price Bid = Price per container per pickup  
 P = Number of Pickups

Item 2, Dumpsters 2 to 10 CY

$$\text{Contract Pricing} = (\text{Unit Price Bid}) \times (\text{S}) \times (\text{P})$$

Where Unit Price Bid = Price per cubic yard of container per pickup  
 S = The Size of the container (in cubic yards)  
 P = Number of Pickups

Item 3, Roll-Off Containers 20 to 40 CY

$$\text{Contract Pricing} = (\text{RF}) + (\text{PF} \times \text{W}) + (\text{HC} \times \text{P})$$

Where RF = Rental Fee  
 PF = Processing Fee (per ton)  
 W = Weight of materials composted (tons)  
 HC = Haul Charge (per pickup)  
 P = Number of pickups

**Lot 17 – Recycling of Construction and Demolition (C&D) Materials**

Item 1, Roll-Off Containers 20 to 40 CYs

$$\text{Contract Pricing} = (\text{RF}) + (\text{PF} \times \text{W}) + (\text{HC} \times \text{P})$$

Where RF = Rental Fee  
 PF = Processing Fee (per ton)  
 W = Weight of materials recycled (tons)  
 HC = Haul Charge (per pickup)  
 P = Number of pickups

**2.23 DOCUMENTATION OF MATERIAL WEIGHTS AND DISPOSAL/RECYCLING LOCATIONS**

(continued)

The Contractor shall maintain a record of the weights of all materials either disposed of or recycled and shall provide this information in reports as specified in *Section 3.7 Reporting Requirements*.

Unless otherwise specified by the Authorized User weights shall be determined as follows:

If specified in the Project Definition, weights of recyclable materials shall be determined by actual weighing of the materials using an inspected/certified and sealed scale, and weigh slips shall be provided along with monthly invoices. For Project Definitions not requiring the use of a certified scale, weights of recyclable materials may be calculated by actual weighing of the materials or by performing a volume conversion. For volume conversions, the Authorized User and Contractor must agree, prior to the start of the work, on a system for estimating the actual volume of materials in the container (is the container 25%, 50%, 75% full) and a conversion factor for converting the volume measurement to a weight.

For trash disposed of in roll-off containers or compactors, weights shall be determined by actual weighing of the materials using an inspected/certified and sealed scale, and weigh slips shall be provided along with monthly invoices.

For trash disposed of in bins and rear or front end loaded dumpsters, the weights may be calculated by actual weighing of the materials or by performing a volume conversion. For volume conversions, the Authorized User and Contractor must agree, prior to the start of the work, on a system for estimating the actual volume of materials in the container (is the container 25%, 50%, 75% full) and a conversion factor for converting the volume measurement to a weight.

In addition, the Contractor shall provide documentation of where the material was either recycled or disposed of to the Authorized User, and must provide this documentation within two weeks of a request from an Authorized User.

## 2.24 REGIONS

Regions awarded for this Contract are specified in Attachment 1 – *Summary of Lots and Regions Awarded*. Regions follow county lines with the exception of Suffolk County which is split into two Regions, Eastern and Western Suffolk County:

1. Albany	2. Allegany	3. Bronx	4. Broome
5. Cattaraugus	6. Cayuga	7. Chautauqua	8. Chemung
9. Chenango	10. Clinton	11. Columbia	12. Cortland
13. Delaware	14. Dutchess	15. Erie	16. Essex
17. Franklin	18. Fulton	19. Genesee	20. Greene
21. Hamilton	22. Herkimer	23. Jefferson	24. Kings
25. Lewis	26. Livingston	27. Madison	28. Monroe
29. Montgomery	30. Nassau	31. New York (Manhattan)	32. Niagara
33. Oneida	34. Onondaga	35. Ontario	36. Orange
37. Orleans	38. Oswego	39. Otsego	40. Putnam
41. Queens	42. Rensselaer	43. Richmond	44. Rockland
45. St. Lawrence	46. Saratoga	47. Schenectady	48. Schoharie
49. Schuyler	50. Seneca	51. Steuben	52. Suffolk (Eastern)
53. Suffolk (Western)	54. Sullivan	55. Tioga	56. Tompkins
57. Ulster	58. Warren	59. Washington	60. Wayne
61. Westchester	62. Wyoming	63. Yates	

For the Suffolk County Regions, Region 52 – Suffolk (Eastern) shall consist of the Towns of Southold and East Hampton, and Region 53 – Suffolk (Western) shall consist of all towns in Suffolk County with the exception of the Towns of Southold and East Hampton.

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## SECTION 3: GENERAL TERMS AND CONDITIONS

### 3.1 CONTRACT PERIOD

The term of this Master Contract shall commence upon mailing of approval by the Office of the General Services Procurement Services. The term shall end on the date specified in the initial Contract Award Notification posted on the OGS website, such that the first Contract(s) awarded under the Solicitation will have a term of five years. Contracts awarded under any additional periodic recruitments periods will have a lesser initial Contract term so that the Contracts from periodic recruitments and the initial awards will end on the same date, regardless of start date. Also, please refer to Section 3.3 *Price Adjustments* for price changes which will be allowed after the first year of the Contract.

If mutually agreed between OGS Procurement Services and the Contractor, the Master Contract may be renewed under the same terms and conditions for additional periods up to a maximum of four years.

Mini-Bid Contracts awarded during the term of the Master Contract may have a term which ends up to three years after the end date of the Master Contract, provided that no Mini-bid contract term exceeds five years, including any extensions.

### 3.2 SHORT TERM EXTENSION

In the event a replacement contract has not been issued, any contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such extension), prices, and delivery requirements. Any extension terminates upon Award of a replacement contract.

### 3.3 PRICE ADJUSTMENTS

#### CPI Adjustments

Awarded bid pricing will be in effect for one (1) year from the start date of the Contract. The CPI adjustment shall apply to all Master Contract and Mini-bid Contract unit pricing except for the Recyclable Floor Price and Revenue Sharing Percentage.

On each annual anniversary date of the Master Contract the Contractor may request a rate change (increase or decrease) from Procurement Services for the respective Master Contract Unit Prices based upon fluctuations in the latest published copy of the Consumer Price Index for all urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212.

- The index is also available through the Internet at the Bureau of Labor Statistics web site at <http://stats.bls.gov/>. Go to “Subjects” > “Inflation and Prices Overview” > “Consumer Price Index” > “CPI Tables” and then refer to “Table Containing History of CPI-U U.S. All Items Indexes and Annual Percent Changes From 1913 to Present is now available in the CPI Detailed Report as Table 24”.

Similarly, on each annual anniversary date of a Mini-Bid Contract, the Contractor may request a rate change (increase or decrease) from the Authorized User to the Mini-Bid Unit Prices using the same methodology. At no time during the term of a Mini-bid contract may the Mini-bid Contract unit pricing exceed the prevailing Master Contract unit pricing.

In addition, the Contractor may reduce fees at any time, with the exception of the Recyclable Floor Price and Revenue Sharing Percentage, by submitting a request to Procurement Services and/or the Authorized User. The Recyclable Floor Price and Revenue Sharing Percentage may be increased at any time by submitting a request to Procurement Services and/or the Authorized User.

The Contractor is solely responsible for notifying Procurement Services or the Authorized User that the Contractor wishes to receive the CPI rate change and to submit a request for the adjusted rate on the Master Contract anniversary date, or the Mini-bid Contract anniversary date as the case may be. Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to Procurement Services or the Authorized User(s), as appropriate. Should the Contractor fail to make a request and submit supporting documentation to Procurement Services or the Authorized User within ninety (90) days after the applicable anniversary date, the Contractor shall be deemed to have waived its right to any increase in price for that year, but Procurement Services or the Authorized User(s) shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

Price adjustments using the CPI involve changing the base payment by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two readings and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value for the 3rd month prior to the current anniversary

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date of the Contract and subtract the CPI value for the 3rd month prior to the previous anniversary date of the Contract (15 months prior to the current anniversary date) [e.g.: If the Contract start date was in April, take the January CPI value of the current year and subtract the January CPI value of the previous year]. That sum is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change (increase or decrease) shall be applied to the next Contract year, upon release of a Contract Addendum from Procurement Services.

The following example illustrates the computation of percent change for a hypothetical April 2004 anniversary calculation:

CPI FOR CURRENT PERIOD (JANUARY 2004)	185.2
LESS CPI FOR PREVIOUS PERIOD (JANUARY 2003)	181.7
EQUALS INDEX POINT CHANGE	3.5
DIVIDED BY PREVIOUS PERIOD CPI	181.7
EQUALS	0.0192
RESULT MULTIPLIED BY 100	<u>0.019 X 100</u>
EQUALS PERCENT CHANGE	1.9%

#### **Requests for Increases in Master Contract Unit Prices Due to Market Conditions Outside Contractor's Control**

Should the above referenced method of price adjustment become, in the sole judgment of the State, unworkable due to market conditions outside of the Contractor's control, such as substantial increases in Tipping or Recyclable Processing Fees, the closing of landfill sites, or restrictions placed on dumping specific types of wastes, New York State reserves the right to negotiate an amendment to increase the then prevailing Master Contract Unit Price for the particular service affected, provided that the Contractor establishes to OGS's satisfaction that it has sustained at least a 25% increase in the cost of providing the affected service within a one year period and that the following conditions are met:

- The Contractor submitted with its bid the following information:
  - A list of the Waste Processing site(s) or Recyclers utilized by the Contractor for the purposes of this Contract.
  - The haul charge to and from the applicable site.
  - The Tipping or Recyclable Processing fees for the above referenced site.
- The Contractor agrees to bill the Authorized User at the existing Mini-bid Unit Prices until the amendment is approved and a new Mini-bid can be performed, which will be done at the discretion of the Authorized User
- It shall be incumbent on the Contractor to request any Master Contract Unit price increases due to market conditions outside its control. Any approved changes in Master Contract Unit prices hereunder shall apply prospectively only. Failure to provide any of the information in the subdivisions above, shall render null or void any later claims by the Contractor for increased compensation for increased costs.

#### **3.4 LIQUIDATED DAMAGES**

If the Contractor fails to complete services in accordance with specifications contained in either this Master Contract, a Project Definition or the Mini-Bid Contract, it is understood, and the Contractor hereby agrees that the value for such incomplete service will be an amount equal to one and one-half (1 ½) times the Authorized User's cost to remedy the deviations.

Deviations for which liquidated damages will apply are:

1. Failure to make a scheduled pickup and/or stop.
2. Early arrival or early departure from the designated pick-up schedule which results in a partial pick-up.
3. Spillage of waste, debris or materials which aren't cleaned up.
4. Failure to maintain equipment in a clean and sanitary condition.
5. Failure to maintain equipment in good operating condition

In each of the aforementioned instances the Contractor will be subject to an assessment of liquidated damages at the rate of one and one-half (1 ½) times the Authorized User's total cost for removal and disposal of materials or the cost of cleanup. For lots which include a Revenue Sharing Component, the Supplier will also be subject to an assessment of liquidated damages at the rate of one and one-half (1 ½) times any lost revenue due to the Authorized User in addition to the liquidated damages assessed for removal and disposal of the materials.

The collective amount of these liquidated damages shall be deducted from the monies due the Contractor for each day/site missed, not as a penalty, but as liquidated damages. However, the Contractor shall not be liable if failure to perform arises out of causes beyond its control and without the fault or negligence of the Contractor (Acts of God, the public enemy, fires, floods, freight embargoes, etc.).

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**3.5 PREVAILING WAGE RATE - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS**

Prevailing Wage Rate as part of the requirements of Article 8 (Sections 220-223) and Article 9 (Sections 230-239) of the New York State Labor Law, requires public work Contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and to provide supplements (fringe benefits) in accordance with prevailing practices in the locality where the work is performed.

Work under this Contract is subject to the prevailing wage rate provisions of New York State Labor Law Article 9 Sections 230-239. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications.

**3.6 PERIODIC RECRUITMENT**

After the initial bidding process is completed and the initial Master Contracts are awarded, the State reserves the right to accept proposals at any time determined by the State to be in its best interest. If the proposal is accepted, a Master Contract shall be awarded and the Contractor shall be placed on the list of prequalified Contractors for the remaining term of the initial agreement.

These periodic recruitments are open to either new Contractors or Contractors who already hold a Master Contract and wish to bid on regions or services that they were not awarded. Once the proposal is evaluated, Master Contracts shall be awarded to all Contractors who are deemed qualified. After award, only those Contractors who hold a Master Contract for a particular region shall be allowed to bid specific projects or facilities in that region utilizing the Project Definition Template as part of the Mini-Bid process.

**3.7 REPORTING REQUIREMENTS**

Contractor shall provide the following reports for the Master Contract and any subsequently awarded Mini-Bid Contracts:

**1. Authorized User Reports**

The Contractor shall provide quarterly and annual reports to each Authorized User that include a sum of the weight or volume of waste disposed of and the weight or volume of materials recycled and/or composted by type of recycling and location, and shall also maintain a continuous record of these materials.

In addition, the Contractor shall also provide a monthly report to the Authorized User (unless Authorized User requests reports on a less frequent basis) which shall be attached to the Invoice and shall detail all work completed that month and shall compare scheduled work versus actual work completed. The report shall include the schedule of pick-ups, container sizes, weights, tare slips, and any other documentation the user may need to verify pricing.

**2. New York State Procurement Services Reports**

In addition to reports for the Authorized User, the Contractor shall also provide an annual report to Procurement Services detailing all services provided under the Contract. The report shall be in Microsoft Excel format and shall be emailed to the individual listed on the front page of the Contract Award Notification and shall reference the Contractor's name, Master Contract number, Mini-Bid Contract number, sales period, authorized user name, location of service, type of service (lot description), type of containers provided, size of containers provided, frequency of pickup, monthly charge and total dollar value of the service.

Please note that additional related sales information and/or detailed Authorized User purchases may be required and must be supplied upon request, and that failure to submit the required reports may result in a determination that the Contractor is non-responsible.

**3.8 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "*Participation in Centralized Contracts*" in Appendix B, *OGS General Specifications*. Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS Procurement Services Customer Services at 518-474-6717.

**3.9 NEW YORK STATE STATEWIDE FINANCIAL SYSTEM**

The New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs, to integrate Contractor-hosted punch-out catalogs, and/or to submit and process invoices electronically. OGS reserves the right to integrate any or all of these future catalog functions with a Contractor during the Contract period, and by submittal of a bid, a Bidder agrees to coordinate with SFS, OGS and/or a third party host, for integration, if OGS exercises its right to do so. No costs or expenses associated with providing information and integration shall be charged to NYS. Technical Requirements for the data elements, such as data types, maximum field lengths, and cXML element names shall be provided by SFS, OGS and/or a third party host during integration. For more information on SFS, its use, and its capabilities please visit the SFS website here: <http://www.sfs.ny.gov/>.

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**3.10 PERFORMANCE/BID BONDS**

There are no BONDS for this Contract. In accordance with Appendix B, §45 Performance/Bid Bond, the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract shall be required at any time during the Term for resulting Contracts.

**3.12 APPENDIX A**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein.

**3.13 APPENDIX B**

Appendix B, Office of General Services General Specifications, dated June 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein and shall govern any situations not covered by this Contract or Appendix A.

**3.13.1 APPENDIX B AMENDMENTS**

A. Appendix B, § 64, is hereby deleted and replaced with the following:

**DISPUTE RESOLUTION PROCEDURES**

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at: <http://nyspro.ogs.ny.gov/content/dispute-resolution-policy-92015> OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

**B. OFFICIAL USE ONLY/NO PERSONAL USE**

The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

**3.14 NEW YORK STATE VENDOR RESPONSIBILITY**

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**3.15 TAX LAW §5-A**

Section 5-a of the Tax Law requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to the NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA.

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Form ST-220-CA must be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form ST-220-TD must be filed with and returned directly to DTF and can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf).

### **3.16 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES**

#### **I. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority- and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

#### **II. Contract Goals**

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that this contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

#### **B. Good Faith Efforts**

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

- (1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.
- (2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- (3) Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

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- (4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
- (5) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
- (6) Other information deemed relevant to the request.

### III. Equal Employment Opportunity (EEO)

#### A. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.

#### B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor submitted a staffing plan on Form EEO 100 to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories. Contractor shall complete the Staffing plan form and submit it as part of their contract.

#### C. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")

1. If Contractor's Form EEO 100- Staffing Plan provides that Contractor is able to report the actual workforce utilized in the performance of this Contract, the following clause shall apply: Contractor agrees it will, upon request, submit to OGS, a workforce utilization report on Form EEO 101, identifying the workforce actually utilized on the Contract if known.
2. If Contractor's EEO Form 100 - Staffing Plan provides that Contractor is unable to separate out the actual workforce utilized in the performance of the Contract from its total workforce, the following clause shall apply: Contractor and OGS agree that Contractor is unable to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

**ALL FORMS ARE AVAILABLE AT:** <http://www.ogs.ny.gov/MWBE/Forms.asp>

### 3.17 CENTRALIZED CONTRACT MODIFICATION PROCESS

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new products or services, make price level revisions, delete products or services, or to make such other updates to the

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established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor, shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, §40.

### **3.18 OVERLAPPING CONTRACT ITEMS**

Products/services available under the Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

### **3.19 CONFLICT OF TERMS**

Conflicts among the documents shall be resolved in the following order or precedence:

1. Appendix A *Standard Clauses for New York State Contracts*;
2. The Master Contract (the portion of this document preceding the signature of the parties, including all attachments);
3. Appendix B *General Specifications*.
4. Any Mini-Bid Contract.

### **3.20 INSURANCE REQUIREMENTS**

The Contractor shall procure and at its sole cost and expense and shall maintain in force at all times during the term of the Contract all policies of insurance pursuant to the requirements outlined in Attachment 2, *Insurance Requirements*.

### **3.21 USE OF SUBCONTRACTORS**

The use of subcontractors is permissible under this Contract provided that: the subcontractor must agree to the same terms and conditions as the Contractor, and the Contractor remains responsible for performance of the Contract terms and conditions. In the event of dissatisfactory performance of the subcontractor, the Contractor is ultimately responsible. OGS reserves the right to approve or disapprove subcontractors. See Appendix B, § 42, *Employees, Subcontractors, and Agents*.

### **3.22 PREFERRED SOURCE PRODUCTS**

NYS State Finance Law §162 requires that governmental entities afford first priority to the products/services of preferred source suppliers such as Correctional Industries (Corcraft), New York State Preferred Source Program for People who are Blind, and NYS Industries for the Disabled, when such products/services meet the form, function and utility of the Authorized User. An Authorized User must determine if a particular commodity or service is approved for a Preferred Source and follow the requirements of State Finance Law §162(3) or (4)(b), respectively, before engaging the Contractor.

### **3.23 DIESEL EMISSIONS REDUCTION ACT**

Pursuant to N.Y. Environmental Conservation Law §19 0323 (“the Law”) it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and public authorities and require certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by Law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this Contract, will comply with the specifications and provisions of NYECL §19 0323, and 6 NYCRR Parts 248 and 249.

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**3.24 SURPLUS/TAKE-BACK/RECYCLING**

I. A State agency is reminded of its obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

III. The NYS Department of Environmental Conservation (DEC) Electronic Equipment Recycling and Reuse Act (“Act”) (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.

IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

**3.25 ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4**

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4 may be found at <http://ogs.ny.gov/EO/4/Default.asp>.

**3.26 DRUG AND ALCOHOL USE PROHIBITED**

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of work under this Contract.

**3.27 TRAFFIC INFRACTIONS**

The State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

(continued)

## SECTION 4: PROCUREMENT INSTRUCTIONS

This Contract is issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly §162, regarding Products provided by Preferred Source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State. Under this Master Contract, Authorized Users will purchase using a Mini-Bid process to satisfy this statutory requirement.

### 4.1 RESERVED:

### 4.2 MINI-BID PROCESS:

For procurements under this Contract, Authorized Users must utilize the Mini-Bid process.

The steps in the Mini-Bid process are as follows:

- A. The Authorized User will identify service requirements, in addition to those identified in the Master Contract, as well as the Mini-Bid Contract term, and other additional terms, in a Project Definition, using the *Project Definition Template*, provided as Attachment 4. OGS reserves the right to unilaterally make revisions, changes and/or updates to the Project Definition Template without processing a formal amendment to the Contract.
- B. The Authorized User will review the location of their facility(ies) to determine what region they are located in. Please note that if an Authorized User is seeking services at multiple sites located in several regions, then separate Mini-Bids must be done for each region.
- C. The Authorized User will review the list of services available in the applicable region.
- D. The Authorized User is required to distribute a completed Project Definition to all Contractors who hold Master Contracts in the region that the facility(ies) are located in where the Authorized User needs services performed. The Authorized User will email or mail the eligible Contractors in the region a copy of the Project Definition.
- E. Prior to receiving Mini-Bids, the Authorized User may conduct site visits, a pre-bid conference, and receive and respond to vendor inquiries.
- F. The Authorized User will receive Mini-Bids from Contractors, containing Mini-Bid pricing, pursuant to a schedule developed in the Project Definition and then evaluate all Mini-Bids.
- G. The Mini-Bids will be evaluated, and a Mini-Bid Contract award will be made, based on the following: (1) compliance with all mandatory requirements set forth in the Project Definition; (2) requirement that the Contractor's Mini-Bid Unit Prices are less than or equal to the Master Contract Unit Prices for all pricing except for the Recyclable Floor Price and Revenue Sharing Percentage; (3) requirement that the Contractor's Mini-Bid Unit Prices for the Recyclable Floor Price and Revenue Sharing Percentage are greater than or equal to the Master Contract Unit Prices; and (4) lowest bid.
- H. For Project Definitions that contain more than one Lot, Award may be made to one Contractor for all Lots on the basis of Total Lowest Cost (the costs for the individual Lots are summed to create the Total Cost) or separate Awards may be made for individual Lots at the discretion of the Authorized User.
- I. For all Mini-Bid awards, the Contractor must be prequalified for the Lot(s) and Region being bid on, and the Mini-Bid Unit Pricing must meet the requirements of Section 2.22 Pricing.
- J. Should a protest be submitted by a Contractor regarding a Mini-bid award, the protest will be considered and decided by the Authorized User.

- K. Once a Mini-Bid Contract award is made, the Authorized User will provide a copy of the Project Definition used for the Mini-Bid and winning bidder's Mini-bid to the Procurement Services Contract Manager listed on the Contract Award Notification document or contract landing page.
- L. The Procurement Services Contract Manager will provide the Authorized User with a Contract Number for the awarded Contractor.
- M. The Authorized User will issue encumbrance documents or other written orders that are effective and binding on the Contractor when placed in the mail addressed to the Contractor at the address shown on the signature page.
- N. Upon notification by the Authorized User of Mini-Bid award, the Contractor shall assist in selecting the optimum equipment type/size, pick up frequencies, and the schedule for installation and delivery of equipment. This information shall be summarized in a 'Schedule of Work' which will be submitted to the Authorized User for their review and approval prior to the start of the work.

#### **4.3 MINI-BID CONTRACT NUMBER**

A Mini-Bid Contract Number must be issued to the selected Contractor for all Mini-Bid procurements.

For Mini-Bid awards, the Master Contract Number is modified by replacing the last "A" with the letter "B" the first time a Contractor is awarded a Mini-Bid and then following with "C", "D", "E", etc. for subsequent awards.

For example, if a Contractor was assigned a Master Contract Number PS1000AA then the first Mini-Bid would be assigned the number PS1000AB, the second PS1000AC and the third PS1000AD and so on.

To obtain a Contract Number for a Mini-Bid, contact the Contract Manager listed on the front of the Contract Award Notification or contract landing page and submit to them a copy of the Project Definition and winning Bidder's Mini-Bid.

For Authorized Users who are not State agencies, a purchase order or other written order may be issued for the work following the Mini-Bid. Written orders are effective and binding on the Contractor when placed in the mail addressed to the Contractor at the address shown on the signature page.

#### **4.4 METHOD OF PAYMENT**

Payments are made each month against the purchase orders or other written orders.

Invoices for payment shall be submitted to the Authorized User at the end of each month on a New York State Standard Voucher or company invoice for services satisfactorily completed during that month.

This voucher or invoice shall contain the Contract ID number (i.e.: CMUXXXX); the name of the Authorized User; the location where service was performed; and itemize all services rendered.

Payment of purchases made by Authorized Users other than State Agencies under shall be the sole responsibility of such entities and the Contractor shall bill such entities directly on vouchers authorized by the said entities.

#### **4.5 M/WBE UTILIZATION GOAL REQUIREMENTS IN THE MINI-BID**

In accordance with Article 15-A of the New York State Executive Law and regulations adopted pursuant thereto, a State Agency [as defined in New York State Executive Law §310(11)] may establish separate goals for participation of New York State Certified minority and women-owned business enterprises, at the time of the Mini-Bid, if the Mini-Bid will result in a State contract (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. As a condition of Award of the Master Contract, the Contractor agrees to be bound by the State Agency's implementation of the provisions of Article 15-A of the New York State Executive Law. For further guidance, please refer to Attachment 11 - Project Definition Template.

#### **4.6 NOTICES**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address, and (ii) if to Contractor, addressed to Contract Administrator at the Contractor address. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

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All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to an Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

#### **4.7 CAPTIONS**

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

#### **4.8 SEVERABILITY**

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

#### **4.9 COUNTERPARTS**

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

#### **4.10 ENTIRE AGREEMENT**

This Contract and the referenced appendices and attachments constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein in accordance with the terms set forth in Appendix B Clauses 28, *Modification of Contract Terms*, and 32, *Purchase Orders*.

(continued)

**CONTRACT SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Agreement being executed simultaneously herewith.

**CONTRACTOR**Signature: Printed Name: Joseph M. HickmanTitle: Sales and Municipal Accounts ManagerCompany Name: Modern Disposal Services, Inc.Date: November 9, 2015Federal ID: 16-0875858NYS Vendor ID 1000014982**THE PEOPLE OF THE STATE OF NEW YORK**Signature: Printed Name: TODD GARDNERTitle: CMS 3

Office of General Services

Date: 4/30/2015

(continued)

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF New York }

: Sworn Statement:

COUNTY OF Niagara }

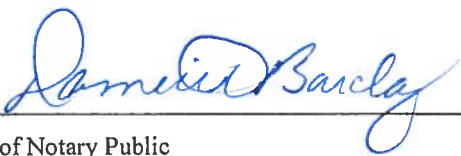
On the 9th day of November in the year 2015, before me personally appeared

Joseph M. Hickman, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at

4746 Model City Road, Model City, NY 14107

and further that:

[Check One]

☐ If an individual: he executed the foregoing instrument in his/her name and on his/her own behalf.☒ If a corporation: he is the Sales Manager of Modern Disposal Services, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.☐ If a partnership: he is the of the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.☐ If a limited liability company: he is a duly authorized member of the LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Signature of Notary Public

Notary Public Registration No. State New York

**DANIELLE D. BARCLAY**  
 Notary Public  
 State of New York  
 My Appointment Expires July 26th 2018

(continued)



# RECYCLING & TRASH REMOVAL SERVICES

PS21700

FIRST AMENDMENT

between

NEW YORK STATE

OFFICE OF GENERAL SERVICES

And

Modern Disposal Services, Inc.

(continued)



**STATE OF NEW YORK OFFICE OF GENERAL SERVICES**

PS21700

**CENTRALIZED CONTRACT FOR RECYCLING & TRASH REMOVAL SERVICES**

THIS FIRST AMENDMENT (hereinafter the "First Amendment") by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") acting pursuant to authority granted under State Finance Law §163, and Modern Disposal Services, Inc., having its principal place of business at 4746 Model City Rd., Model City, NY 14107 (hereinafter referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

WHEREAS, the Parties heretofore entered into Contract # PS21700 (hereinafter the "Contract") effective December 1, 2015 for Recycling & Trash Removal Services, as that term is defined in the Contract; and

WHEREAS, the Parties have agreed to enter this First Amendment to clarify certain obligations under the Contract; and

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each Party hereto from the other, the Parties hereby agree as follows:

1. Section 4.1 of the Contract is deleted in its entirety.

2. The first sentence of Section 4.2 is deleted in its entirety and replaced with the following language:

For procurements under this contract, Authorized Users must utilize the Mini-Bid process.

3. The Parties agree that the attached page 30 reflecting the foregoing amendments will be inserted into the contract in replacement of the current page 30.

4. Except as herein modified, all terms of Contract # PS21700 as amended shall remain in full force and effect.

Remainder of page intentionally left blank

(continued)

1<sup>st</sup> Amendment - Contract PS21700, Modern Disposal Services, Inc.

CONTRACTOR

Signature: 

Printed Name: Joseph M. Hickman

Title: Sales Manager

Company Name: Modern Disposal Services, Inc.

Federal ID: 16-0875858

NYS Vendor ID 1000014982

Date: January 27, 2016

THE PEOPLE OF THE STATE OF NEW YORK

Signature: 

Printed Name: Jill McCabe  
Assistant Director

Title: Procurement Services

Office of General Services

Date: 2/11/16

(continued)

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF ☐ New York

: ss:

COUNTY OF ☐ Niagara

On the 27<sup>th</sup> day of January in the year 2016, before me personally appeared Joseph M. Hickman, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at

Town of Model City and City of Buffalo

County of Niagara, State of New York; and further that:

[Check One]

(0 If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

(☒ If a corporation): he is the Sales Manager of Modern Disposal Services, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(0 If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(0 If a limited liability company): he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Signature of Notary Public

Notary Public Registration No. 01MU6276351

State New York



(continued)

## SECTION 4: PROCUREMENT INSTRUCTIONS

This Contract is issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements. Before proceeding with a purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly §162, regarding Products provided by Preferred Source suppliers.

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- I. For all Mini-Bid awards, the Contractor must be prequalified for the Lot(s) and Region being bid on, and the Mini-Bid Unit Pricing must meet the requirements of Section 2.22 Pricing.
- J. Should a protest be submitted by a Contractor regarding a Mini-bid award, the protest will be considered and decided by the Authorized User.

(continued)